

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
76-1182

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-1182

UNITED STATES OF AMERICA,

Appellee.

v.

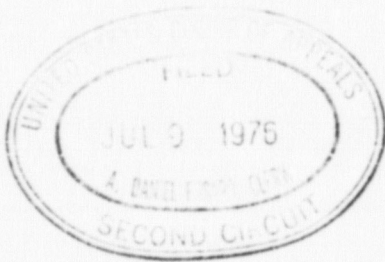
JANET TERRI,

Defendant-Appellant.

Appeal from a Judgment of Conviction in the
United States District Court for the
Eastern District of New York

APPENDIX ON BEHALF OF APPELLANT JANET TERRI

VOL. II pp. 265a-547a



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PAGINATION AS IN ORIGINAL COPY

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[315]

265a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VACATED

UNITED STATES OF AMERICA,

-against-

WILLIAM J. JOYCE, DONALD WALSH,
EDWARD J. BOYLE, THOMAS M. BURNS,
JAMES GRIMSLEY, LEONARD NITTI,
JANET TERRI, also known as
Janet Ferry, ROBERT SCHOENLY,
PETER AREITER, LOUIS BOVELL,
JOHN FREUDIGER and MORTON HANAN,

Defendants.

75-CR-488

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JAN 29 1976

TIME AM
P.M.

United States Courthouse
Brooklyn, New York

January 21, 1976
10:00 o'clock A.M.

Before:

HONORABLE THOMAS C. PLATT, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

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1 [334] Areiter-cross/O'Brien 266a
2 Q The contents of the box could not have been
3 revealing or indicate to you it was the same box?

4 A No.

5 Q What did you notice? You didn't see any marks
6 on the boxes, did you?

7 A No.

8 Q What did you notice on the box at Mr. Nitti's
9 house that made you believe it was the same box at Miss
10 Terri's house?

11 A I saw a bunch of boxes, the same size that I had
12 moved.

13 Q These are pretty much standard type of cardboard
14 boxes?

15 A Yes.

16 Q What size were they?

17 A They were different sizes.

18 Q The box that you saw at Mr. Nitti's house, what
19 size was that?

20 A I guess it was a foot high, fourteen inches long.

21 Q Isn't it a fact, Mr. Areiter, that you were
22 really assuming that was the same box or the same type of box
23 you had brought to Miss Terri's house?

24 A I know I moved a bunch of boxes to Janet Terri's
25 house and I saw -- I don't know if it was the same amount --

but I saw a bunch of boxes over Lenny's house.

Q Do you have actual knowledge it was the same boxes?

A No.

Q Did you have anything to do with moving boxes from Miss Terri's house to Mr. Nitti's house?

A No.

Q You never saw the boxes being moved from Miss Terri's?

A No.

Q You are assuming because it was the same size box that it was the same box?

A And quite an amount.

Q How many did you see at Mr. Nitti's house?

A Approximately a hundred. I couldn't say to be exact. That is what we moved.

Q Is there anything else you can tell us as to why you believe they are the same boxes as at Miss Terri's house?

A No.

MR. O'BRIEN: Thank you.

CROSS-EXAMINATION

BY MR. SPERLING:

Q Mr. Areiter, I represent Louis Bovell who you

Burns-direct

7

1

2

A Fifteen, twenty minutes.

3

Q Was there anything different in the appearance of the boxes when you moved them into Lenny's house from when you first saw them?

6

A The wrappers were off.

7

Q Besides putting the boxes in Lenny's garage, did you put anything else in the garage?

9

A There were plastic bags full of the wrappings.

10

Q Approximately how many boxes did you move?

11

A One hundred, 117.

12

Q Did they appear to be the same type of boxes

13

that you had moved on March 17th?

14

A Yes.

15

MR. O'BRIEN: I object to the form of the question.

16

17

THE COURT: You may proceed.

18

(Pause.)

19

THE COURT: I don't answer objections to counsel who don't rise.

20

21

MR. O'BRIEN: I'm sorry. I object to that question. I object to the form of the question.

22

23

THE COURT: Read back the question.

24

(Whereupon, the last question was read by the reporter.)

25

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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EXHIBITS

<u>Government's Exhibit No.</u>	<u>Description</u>	<u>For Id.</u>	<u>In Ev.</u>
3500-8	Interview, Burns	417	
9	"	417	
10	"	417	
11	Grand jury minutes	428	
12	Photo of truck		442
13	Photo of House		444
14	"		446
15	Document		469
16	Hand gun	467	469
	Photo	471	472

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MR. MALTESE: Your Honor, I withdraw my objection.

THE COURT: All right. The objections are overruled.

MR. KAPLAN: I have objected.

THE COURT: I know you have. The objection is overruled. They may be received.

THE CLERK: Government Exhibits 19 and 20 are received in evidence.

Q Now, following the arrest on March 27th, did you interview any of the individuals arrested?

A Yes, I did.

Q Did you receive certain information from one or more of those individuals?

A Yes, we did.

Q As a result of that information, did you do anything?

A Yes. As a result of that information, we obtained a search warrant for the premises of the garage of Leonard Nitti.

Q Did there come a time when you went to the garage of Leonard Nitti?

A Yes. The following day on 3/28/75.

Q And what did you do at Leonard Nitti's house?

paper.

MR. KIMELMAN: Will you mark this.

THE CLERK: One carton marked for identification as Government Exhibit 23.

(So marked for identification.)

Q Agent Sullivan, I show you what has been marked as Government Exhibit 23 for identification. I ask you if you can identify this box and its contents.

A Yes. This box contains the plastic binding cord which we obtained from the plastic garbage bags from the home of Leonard -- from the garage of Leonard Nitti when we executed the search warrant.

MR. KIMELMAN: Judge, I offer Government Exhibit 23.

MR. VERDIRAMO: No objection.

MR. O'BRIEN: Your Honor, I object only on the grounds that those yellow bindings were not on the boxes when my client removed -- carried the boxes and lifted them on the truck. That's my objection.

MR. KAPLAN: I object, your Honor.

MR. CORBETT: Same objection that I made before, Judge.

THE COURT: Same ruling.

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir.</u>	<u>Recross</u>
Joseph F. Sullivan	567	- 803		
Edward Boyle	588	606	675 682	676 682
Joseph Giordano	684	697	711	716
George Van Nostrand	719	726		
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E X H I B I T SGovernment's Exs.

		<u>For Id.</u>	<u>In Evid.</u>
1	Advice of Rights form	570	571
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17	Timex Watch	690	691
3500-20	Interview 3/27/75 of Jas. Grimsley		719
18	Advice of Rights form	721	722
3500-20	FBI report 3/18/75	743	
21	Interview of Grimsley 3/27/75	743	
22	Surveillance of 5310 18th Ave.	743	
23	Search Warrant for Nitti's garage	743	
24	Grand Jury Minutes 6/16/75	743	
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26	Grand Jury Minutes 12/22/75	743	
19 and 20	Two Cartons	748	751

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Government's Exhibits

For Ident.

In Evid.

21 and 22	Two Cartons	753	754
23	Contents of Carton.	758	759
24	Contents of Carton	761	763
25	Batch of bills	765	
26	2-page document	766	769
27	Advice of Rights form	779	780
28	Form	791	792

Defendants' Exs.

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1 MR. O'BRIEN: I think it would be terribly
2 prejudicial if they were ever called as witnesses.
3 They just admitted to the Jury that they had pled
4 guilty, would be prejudicial.

5 THE COURT: You won't have to ask them the
6 question.

7 MR. O'BRIEN: The Government would.

8 THE COURT: No.

9 MR. KIMELMAN: Your Honor, there is a matter
10 that I think we should also discuss, prior to
11 bringing the Jury in, with Mr. Kaplan.

12 MR. KAPLAN: You want me?

13 Judge, I'd like Mr. Kimelman to make Special
14 Agent Thomas Walsh of the FBI available as a wit-
15 ness.

16 MR. KIMELMAN: Your Honor, the purpose of
17 calling Agent Walsh is to ask him about any state-
18 ment made to him by Janet Ferry prior to the
19 indictment in this case.

20 I question the admissibility of such a
21 statement by defense counsel, since he's obviously
22 not offering it as a false exculpatory statement
23 and doesn't, as far as the Government is concerned,
24 have any admissions in it either.

25 I think it is just an attempt to get this

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1 defendant's hearsay statements before the Jury
2 without any cause.

3 THE COURT: I suppose you can subpoena
4 Mr. Walsh.

5 MR. KIMELMAN: No. Mr. Walsh is an FBI
6 agent at the airport. We have no objection to
7 making him available as a defense witness, with-
8 out the need of a subpoena.

9 I was questioning the admissibility of
10 the evidence.

11 THE COURT: We can't determine that until
12 we put Mr. Walsh on the stand.

13 MR. KIMELMAN: Very good, your Honor.

14 THE COURT: We can have -- if you think it
15 will be inadmissible, we can excuse the Jury and
16 put him on the witness stand and determine that.

17 MR. KIMELMAN: Very good, your Honor.

18 I was just informed by Agent Sullivan that
19 Mr. Walsh is sick today. They are attempting
20 to reach him at home.

21 THE COURT: What is he going to say?

22 MR. KAPLAN: Well, Judge, I think he's got
23 affirmative evidence that the defendant was nowhere
24 near New York on March 17, 1975.

25 THE COURT: You mean, what she says?

1 MR. KAPLAN: No, no. More than that.

2 More than that.

3 I've asked Mr. Kimelman -- I don't think
4 this is a matter of any great substance, Judge,
5 and I'm too old to play games, and I'm certainly
6 not interested in wasting any time here or pro-
7 longing this trial.

8 In fact, my interest is exactly to the
9 contrary. I've asked him to stipulate to put in
10 that interview. He doesn't want to do it.

11 I want him to produce the agent. You don't
12 want to let the agent testify?

13 THE COURT: Maybe, if you give me a copy
14 of the interview, at least I can get up to the same
15 level that you are.

16 MR. KAPLAN: I don't know if we are at any
17 elevated level.

18 They gave him affirmative evidence that she
19 was in the Jug End Carn, in South Egremont, Massa-
20 chusetts, on March 17th, and I understand that he
21 affirmatively investigated it and found out that
22 what she said was true.

23 If that is the case, he's a legitimate de-
24 fense witness and I want him.

25 THE COURT: Self-serving statements cannot

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be produced through him.

What his investigation showed might be something else.

MR. KAPLAN: If he investigated it and it showed it was true, it is affirmative evidence.

THE COURT: If he went up there and talked to her mother and she briefed her mother to give her an alibi?

MR. KAPLAN: Judge, you'll have to hear the witness.

I don't want to speculate on what the witness will say. I haven't heard him. I haven't spoken to him.

I want to call him. I'll put him on the stand. You'll hear him and you'll be able to rule appropriately.

THE COURT: What was the date?

MR. KAPLAN: March 17th and the date that the stuff was allegedly put in the basement of her parents' home.

THE COURT: Yes. But what about the prior? Wasn't there something prior with respect to her?

MR. KAPLAN: That's the first operative date, March 17th.

MR. KIMELMAN: March 17th, when the goods

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1 went into her house.

2 March 21st is when they went out of her
3 house and March 21st is the date she went to the
4 bar with Walsh to show the rented truck.

5 THE COURT: She was supposedly -- she went up --

6 MR. KIMELMAN: According to her statement,
7 your Honor.

8 THE COURT: -- returned to New York on
9 March 19th.

10 MR. KIMELMAN: That's correct, your Honor.

11 THE COURT: She was here -- she might have
12 been up at the Jug End in the latter part of
13 March 17th, but she was here in the morning of
14 March 17th.

15 Isn't she supposed to have had a conversa-
16 tion?

17 MR. KAPLAN: Not on March 17th, your Honor.

18 The only evidence that affects her directly
19 is the testimony about what happened on March 21st.
20 That's the only time anybody puts her --

21 THE COURT: She was back here by then.

22 MR. KIMELMAN: Yes.

23 MR. KAPLAN: But she wasn't here on the 17th.
24 That evening the stuff was supposed to have been
25 put in the basement of her parents' home.

1 MR. KIMELMAN: Your Honor, there has never
2 been --

3 THE COURT: What difference would that make
4 then, -- she was away or not? She might well
5 have given permission.

6 MR. KAPLAN: I don't know, Judge. The
7 Government may argue that to the Jury in the
8 absence of any evidence that indicates that, but
9 the basement isn't on trial. She is on trial.

10 If the basement was on trial, I'd be glad to
11 plead the basement guilty.

12 THE COURT: But it is -- there is a broader
13 question here.

14 There is a question of aiding and abetting
15 in the possession of the goods.

16 MR. KAPLAN: Judge, I'm entitled to call
17 witnesses. He's got to produce them if they are
18 available, and you are going to have to rule on
19 whether or not they can testify and I don't think
20 your Honor ought to rule without hearing the wit-
21 ness.

22 THE COURT: I agree with you. I'm not trying
23 to rule. I am trying to find out what the basis
24 of your request is.

25 MR. KAPLAN: Judge, I don't think I have to

1 tell him that much.

2 I'm an appointed lawyer. I'm operating
3 with public funds.

4 THE COURT: Don't give me a long sermon.

5 MR. KAPLAN: In order to save a subpoena
6 fee, I asked him to produce a witness that is
7 clearly under his control.

8 I don't have to tell him anything. I
9 could have sent a process server out to Kennedy
10 and charge the Government.

11 MR. KIMELMAN: Mr. Kaplan is missing the
12 point.

13 I said I would produce the witness without
14 a subpoena.

15 I'm objecting and I'm asking for an offer
16 of proof.

17 MR. KAPLAN: I don't think I have to do that,
18 Judge. I don't think I have to make him a partner
19 in my defense.

20 MR. KIMELMAN: Maybe you can make the Court
21 a recipient of the offer of proof.

22 MR. KAPLAN: I don't have to do that in your
23 presence either, Mr. Kimelman.

24 THE COURT: When was the time that she had
25 the conversations with --

1 MR. KAPLAN: March 21st was supposed to have
2 been the conversations about the truck, Judge.

3 There are two dates that affect her, March 17th
4 and March 21st.

5 March 17th the goods were supposed to have
6 been put in her parents' home, and on March 21st,
7 she was supposed to have had the conversation
8 with Schoenly about the trucks.

9 Those are the only two dates that anybody
10 has testified concerning her.

11 THE COURT: Well, let's bring him in, when
12 he's available.

13 It seems to me she was back the 21st from
14 what this indicates.

15 MR. KAPLAN: It's clearly relevant where
16 she was on the 17th, Judge, by any standard.

17 THE COURT: It may or may not be.

18 MR. KAPLAN: All right.

19 THE COURT: We will see.

20 You want this back?

21 MR. KIMELMAN: If I may, your Honor.

22 MR. KAPLAN: I don't have any idea of what
23 the proposed scheduling now is, Judge, with
24 respect to the rest of the people.

25 I don't want him to bring him in if he's

1 ill. I'll be perfectly happy to wait until
2 tomorrow and wait until he recovers.

3 I don't want to do him any personal damage.

4 MR. KIMELMAN: Your Honor, the Government,
5 according to the present schedule, should probably
6 rest by lunch.

7 THE COURT: All right. We will know better
8 by lunchtime what our schedule is, Mr. Kaplan.

9 Bring them in.

10
11 (Continued on next page.)
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J3 fols.

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2 taken.

3 Q Right. Okay. And now on Government Exhibit 4,
4 was anything done prior to the pictures being taken here?

5 A Yes.

6 Q All right. Will you tell us what was done?

7 A Yes. The bags were arranged so that the airway
8 bill number could be read on the photograph when the picture
9 was developed.

10 Q All right. That was done by the FBI because you
11 particularly wanted the airway bill to be shown prior to the
12 taking of the photograph, right?

13 A Right.

14 Q Okay. My final question, Mr. Sullivan: on these
15 boxes with the word -- taking a look at Government Exhibit 20,
16 where on Government Exhibit 20 it says here, "Blue Lady 150."

17 A Yes.

18 Q Do you know whether or not that was written or --
19 do you know when that was written on those boxes?

20 A Not from my own knowledge.

21 Q All right. From your investigation, were you
22 able to determine when that "Blue Lady 150" was written on
23 those boxes?

24 A We could conclude that it was written while it
25 was at the residence of Janet Terri.

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MR. KAPLAN: Objection. I move to strike it out, if your Honor please.

THE COURT: He answered the question, counselor.

MR. KAPLAN: I don't think he should ask him for a conclusion as to my client.

MR. O'BRIEN: I would agree with that.

THE COURT: No. But you asked for the -- you asked for the conclusion. You asked him what his investigation showed.

MR. KAPLAN: He asked him. I didn't ask him.

THE COURT: I understand that. But unfortunately for you, you didn't object in time.

MR. KAPLAN: Am I responsible for his sins now, too? I don't know what the witness is going to say.

THE COURT: Well, he shouldn't have asked the question.

MR. KAPLAN: Pardon me?

THE COURT: Mr. Kaplan, Mr. O'Brien shouldn't have asked the witness. Unfortunately, he should --

MR. KAPLAN: Give Mr. O'Brien five demerits.

THE COURT: All right, five demerits.

MR. KAPLAN: Would you mind instructing the jury that the answer is not binding on --

THE COURT: Yes. The answer is not binding on

2 Mrs. Terri.

3 MR. KAPLAN: Thank you very much.

4 MR. O'BRIEN: I have no other questions.

5 THE COURT: Do you wish to ask any questions, Mr.
6 Kaplan?

7 MR. KAPLAN: I have nothing further, your Honor.

8 THE COURT: Mr. Sperling?

9 MR. SPERLING: I have no questions of this
10 witness, your Honor.

11 MR. VERDIRAMO: I have concluded my cross-
12 examination, but with the Court's permission I would
13 like to ask one more question.

14 THE COURT: It's up to Mr. Kimelman.

15 MR. KIMELMAN: I have none.

16 MR. VERDIRAMO: No objection?

17 MR. KIMELMAN: No.

18 CROSS-EXAMINATION

19 BY MR. VERDIRAMO: (Continued)

20 Q Mr. Sullivan, you returned, did you not, 113
21 cases to Timex Watches -- to Timex Corporation?

22 A No. I think it was -- the figure was 115.

23 Q A hundred and fifteen?

24 A A hundred and fifteen.

25 Q And these other four that you have here would

1 MR KAPLAN: Your Honor, I move to dismiss each
2 count of the indictment as far as it affects the
3 defendant Perry.

4 THE COURT: That's all?

5 MR. KAPLAN: Well, Judge, it's getting close to
6 lunchtime and I'm hungry.

7 THE COURT: Have you got a basis for the motion?

8 MR. KAPLAN: The evidence against her is
9 extremely thin. The only time anybody places her near
10 anything was on the 21st of March. She was supposed
11 to have a conversation about renting a truck. Nobody
12 places her anywhere on the 17th. There is no showing
13 she had possession of anything at any time.

14 THE COURT: Except in her house.

15 MR. KAPLAN: The basement is clearly guilty.

16 Your Honor, Mr. Kimelman is going to stipulate
17 that the house is owned by her parents.

18 THE COURT: She is part of a conversation with
19 Walsh and Schoenly to the effect, "We all keep our
20 mouths shut, plead the Fifth and nothing happens."

21 MR. KAPLAN: That wouldn't be proof of a
22 conspiracy. That happened in June some time.

23 She was present when Joyce was supposed to have
24 told Schoenly to take the Fifth. There is no showing
25

2 she was near the watches.

1 The fact that she resides in her parents' house
2 and nobody puts her there at the time --

3 THE COURT: Four days later she calls for a truck.

4 If you came back from a ski trip and found a
5 whole bunch of cartons in your cellar you would want to
6 know why --

7 MR. KAPLAN: If I went on a trip and came back
8 and found cartons in my father's house I would want to
9 know -- well, I guess you never knew my father, Judge.

10 THE COURT: She called the truck.

11 MR. KAPLAN: There's no proof she had possession
12 or conspired to do anything. I don't know how that
13 proves there is any control.

14 I know your Honor made your position on this
15 known last week but I honestly submit to your Honor,
16 without kidding around, there is very, very thin proof,
17 very little proof at all, if any, that affects this
18 woman and I don't believe there is enough to go to the
19 jury.

20 THE COURT: It's a jury question.

21 MR. KAPLAN: I don't know what you are going to
22 give the jury --

23 THE COURT: You have the same question
24 Mr. Sperling has -- the possession and control, aiding
25

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3

1 and abetting in the possession and control of recently-
2 stolen property and whether that imparts knowledge.
3 The jury may infer knowledge.

4 MR. KAPLAN: I don't agree with that, your Honor.

5 THE COURT: It's a harsh rule but there it is.

6 MR. KAPLAN: I don't think that is the rule.

7 I think the rule is -- there is an inference if she has
8 recent -- possession of recently stolen property she
9 knows to be stolen.

10 I have urged my position.

11 I didn't want to argue over what your Honor
12 thinks the facts are. I just don't think it is there.

13 THE COURT: I think you have got a good argument
14 but I think there is enough to go to the jury.

15 MR. KAPLAN: The questions of law I have to
16 argue with you, not with the jury.

17 THE COURT: You have a good argument for the jury.

18 MR. KAPLAN: I appreciate that but I am not
19 arguing the facts with you now but the law.

20 THE COURT: I think the law is recent possession
21 of stolen property imparts knowledge and the custody
22 and control question is a question of fact for the jury.

23 MR. KAPLAN: I made my motion.

24 MR. VERDIRAMO: I apologize. The case the
25 prosecutor refers to is my case before Judge Costantino,

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Joan Cullen	859				863
Walter Lucas	904	928	932	932	911
William Gibson	961				
Ray Krispin	967				
Frank Salvato	969	970	973		
James Kettler	974	977			
Leonard Vollkommer	978	981	983		
James Grimsley	994	1014	1065	1069	
Thomas Robinson	985	987			
Elizabeth Grimsley	1073				
Thomas Robinson	1075	1076	1078	1078	
Louis Bovell	1085				

E X H I B I T S

<u>For the Government</u>	<u>ID</u>	<u>EV</u>
30 Flying Tigers Record	862	864
31 2-page report	865	
33 3-page document	905	913
34 Photostatic copy	906	
35 Invoices	906	
36 Invoices	906	
38 Letter dated March 18, 1975	906	
39 Inventory		923

[1102]

290a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Vile VI
FILED
CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY

JAN 29 1976

PM AM.....
PM.....

75-CR-488

UNITED STATES OF AMERICA,

-against-

WILLIAM J. JOYCE, DONALD WALSH,
EDWARD J. BOYLE, THOMAS M. BURNS,
JAMES GRIMSLEY, LEONARD NITTI,
JANET TERRI, also known as
Janet Ferry, ROBERT SCHOENLY,
PETER AREITER, LOUIS BOVELL,

Defendants.

United States Courthouse
Brooklyn, New York

January 27, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J. and a Jury

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

46E

Appearances:

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THE COURT: Are we ready to go?

MR. O'BRIEN: Your Honor, I have no application
but I have request the charge --

THE COURT: You say you have an application?

MR. O'BRIEN: I said I have no application, I
would just like to hand up the request to charge.

THE COURT: There was this question of the FBI
agent, whether the FBI agent was to be permitted to
testify --

MR. KIMELMAN: The agent is here, your Honor.
Your Honor, I would appreciate if we could
resolve this matter before he is called.

THE COURT: Put him on the stand, let us hear
what he has to say.

MR. VERDIRAMO: Your Honor, as to the Flying
Tiger --

THE COURT: You are going to have some time,
Mr. Kaplan is going to examine the FBI agent.

MR. KAPLAN: We have a witness on the stand.

THE COURT: We will interrupt him.

Bring him up and let us put him on the stand
out of the presence of the jury.

MR. KAPLAN: I don't know why we have to do
that.

THE COURT: Because he objects to his testimony.

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MR. KAPLAN: We didn't do that with any other witness.

THE COURT: The Government is objecting to his testimony, and how am I going to know what he will testify to unless I hear it.

MR. KAPLAN: Judge, I never heard of this procedure, I am entitled to call a witness.

THE COURT: You are calling him and he is objecting.

MR. KAPLAN: So now I have to give a preview as to what his testimony will be without the jury being present?

THE COURT: We will have a preview of what happened at his interview about which you spoke to me last night.

MR. KAPLAN: I object to his procedure.

THE COURT: All right, proceed.

MR. KAPLAN: Shall I call him?

THE COURT: Yes, call him.

MR. KAPLAN: Without the jury in the box?

THE COURT: Call him.

MR. VERDIRAMO: With your permission, your Honor, I will be outside the courtroom discussing these records.

THE COURT: But we are going to have this

1 preliminary hearing.

2 MR. SPERLING: Your Honor, I have request the
3 charge but I let one out which I would like to bring
4 in tomorrow morning.

5 THE COURT: It depends, maybe it will be too
6 late, I don't know. We will have to see.

7 Let us not hold this up.

8 MR. KAPLAN: All right, I am ready, Judge.

9 He is here.

10 Mr. Walsh.

11 T H O M A S P W A L S H , called as a witness on
12 behalf of the defendant, Janet Terri, having been
13 duly sworn by the Clerk of the Court, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. KAPLAN:

17 Q What is your business or occupation, Mr. Walsh?

18 A I am a special agent of the Federal Bureau of
19 Investigation.

20 Q And how long have you been so employed?

21 A Twenty nine years.

22 Q Now, in the course of your official duties, did
23 you have occasion sometime after March 17, 1975 to visit the
24 premises at 12 Harriet Place in Lynbrook, New York?

25 A I did.

Q And did you in the course of that investigation examine the basement premises of that house?

A I did.

Q All right.

Now would you be kind enough to come to that blackboard, Agent Walsh, and draw us a diagram of the basement premises.

MR. KAPLAN: May I flip the blackboard, Judge, we are running out of space?

THE COURT: You may, but I don't know whether you can.

MR. KAPLAN: Then I will just turn it around. There is something on it, I don't know if anybody wants it.

Do we need that anymore (indicating)?

THE COURT: I don't know what that is.

Do you know what that is (addressing clerk)?

I know that on the right hand side it relates to the girl who fell through the tower on Jones Beach, the other one I don't know what it is.

I guess you might as well wipe it out.

Do you have an eraser? I don't suppose you do.

MR. KAPLAN: Is this an eraser?

THE CLERK: Yes.

(At this point the Clerk began erasing the blackboard.)

MR. KAPLAN: That is in addition to his other duties, your Honor.

THE COURT: I would have made you do it.

MR. KAPLAN: Judge, I am a colonel.

THE COURT: That doesn't make any difference, when you come in here you are nothing but an attorney.

You certainly can erase the righthand side.

(The righthand side of the blackboard was then erased.)

(Agent Walsh then took a position beside the blackboard.)

MR. KAPLAN: See if you can find a piece of chalk, Agent, and draw us a picture of the basement.

THE WITNESS: The basement is shaped in the form of a T, you walk down the stairs, and then it branches off at the top of the T, thusly (drawing and indicating). They (indicating) are the steps going down to the basement, you go down here (indicating).

You have a room here (indicating) and over this side there is another room (indicating).

At this (indicating) end of the room there was -- it was a curtain-like effect here (indicating), like a

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2 bamboo curtain, as I recall, and back here (indicating)
3 there was another darkened area, and behind this area
4 here (indicating) there was also another smaller
5 darkened area.

6 That roughly was the shape of the basement.

7 MR. KAPLAN: Now where did you get access to
8 the basement from?

9 THE WITNESS: At the top, at the top of the
10 stairs here (indicating), and I believe that was right
11 off the kitchen.

12 MR. KAPLAN: Was that in the front of the house
13 or the side of the house?

14 THE WITNESS: No, this was inside the house.

15 MR. KAPLAN: In order to get access to the
16 basement, you had to go into the house itself?

17 THE WITNESS: That is right.

18 MR. KAPLAN: Okay.

19 All right, will you resume the stand, please?

20 (The witness then retook the witness stand.)

21 MR. KAPLAN: Can I have the picture or that
22 something or other.

23 THE COURT: He draws almost as well as you do,
24 Colonel.

25 BY MR. KAPLAN:

1 [1110]
2 Q Now I am going to show you Government's Exhibit
3 6 in evidence.

4 Is this the house that you visited?

5 A That looks like the house.

6 Q Okay. Now, does that picture show where the
7 entrance to the house is that you went in?

8 A Yes.

9 Q Can you indicate it by putting an X on the
10 picture, please, with the red pencil?

11 (The witness did as requested.)

12 Q Now, you went in through this entrance, did you
13 (indicating)?

14 A Right.

15 Q And you went into a kitchen, as you recall it?

16 A Well, not just right away. When you go in
17 through this (indicating), when you go into the house right
18 here (indicating), there is a porch, a closed porch that runs
19 the length of the front of the house --

20 Q Yes?

21 A You go through that porch and there is a doorway
22 that leads into the livingroom, and then you go from the
23 livingroom, as I recall -- to my best recollection, I was only
24 in the house once -- you go from there towards the kitchen and
25 as you approach the kitchen there is like a little passageway

and there is a stairway leading down to the basement.

Q Now, to the best of your recollection, Mr. Walsh, is that the only entrance to the basement?

A I couldn't say.

Q Was that the only entrance that you saw?

A That was the only one that I saw.

Q Now, when you went to the premises, what date was it?

A I visited those premises on April 8th.

Q And were you with some other police officers?

A Yes, I was.

Q Who were you with?

A I was with a New York policeman.

Q All right.

Now, when you went to the premises, did you see the defendant Janet Terri?

A Yes, I did.

Q Did you talk to her?

A Yes, I did.

Q Did you ask her to show you the basement?

A I did.

Q And did she show you the basement?

A Yes, she showed me the basement.

Q Did she take you down to the basement or show

1 [1111a]

Walsh-direct

300a

2 you how to get to the basement?

3 A She showed us the entrance to the basement.

4 Q And you and the other officer went down to the
5 basement; did you not?

6 A That is right.

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Q And did you look around the basement, both of you?

A We did.

Q Will you tell us what this look around consisted of.

A Well, we checked the four sections of the basement, as I pointed out there, we looked in the two rooms on either side of the T, and after that we walked into the rear of those two rooms, as I say which are darkened areas; they weren't too bright and we didn't see any light back there and we did look around, yes.

Q Did you look around the floor?

A Yes, we did.

Q Did you look around at the furnishings in the basement?

A We did.

Q And as you recall it, what furnishings were there in that basement?

A Well, I remember there was a fish tank down there and the basement was sparsely fixed with furniture, I can't recall the exact furniture that was downthere, I wasn't interested in the furniture.

Q You were looking for some cartons, weren't you?

A That is right.

1 [1113] Walsh-direct 302a
2 Q Cartons similar to these exhibits 22 and so on
3 that are on the floor?

4 A I was looking for some evidence that cartons
5 possibly had been there.

6 Q All right.
7 Did you find any such evidence at all?

8 A No, I didn't.

9 Q And the fellow officer that was with you, did
10 he find any such evidence?

11 A No, he didn't.

12 Q Were you satisfied that you had made a thorough
13 investigation of the basement area?

14 A We were.

15 Q And nobody rushed you, or did they, or ask you
16 to leave?

17 A No, no, we had permission to go down and look
18 at the basement.

19 Q And you took all the time that was necessary to
20 do this?

21 A Right.

22 Q And after you did this, you were satisfied
23 that you found no indication that any cartons had been stored
24 in that basement; is that the fact?

25 A At that time, yes, sir.

1 [1114]
2 Q At that time?

3 A At that time, right.

4 Q Was that the only visit that you made to those
5 premises?

6 A That was the only visit that I made.

7 Q Now, Mr. Walsh, did you also interview the
8 defendant Janet Terri?

9 A I did.

10 Q And did you interview her in the presence of
11 this New York City detective?

12 A Yes, we did.

13 Q Now, without prolonging this, is it fair to
14 state that you went through the business of advising her of
15 her right to a lawyer, you asked her to sign the form and so
16 on, you did all of that?

17 A We did that, right.

18 Q And after you did all of that, did she make a
19 statement to you or did she answer the questions -- did she
20 not?

21 A She answered our questions, yes.

22 Q Yes.

23 Now, without going into everything that you
24 asked her at this point, did you ask her to account for her
25 whereabouts on March 17, 1975 -- in words or in substance?

A We did.

Q And did she make an answer ?

A She gave us an answer, yes, she did.

Q Now, in the course of making that answer, did she show you these two papers (indicating).

A Yes, yes, she did.

MR. KAPLAN: May I have them marked for identification, please.

THE CLERK: Are they both one?

MR. KAPLAN: I don't care how you mark them.

THE CLERK: Two slips marked for identification as Defendant's Exhibit C.

(So marked.)

BY MR. KAPLAN:

Q Now, did she offer these two slips of paper or show you these two slips of paper in connection with the statement that she made to you as to where she was on March 17th or 18th?

A Yes, she did.

Q For purposes of this hearing and in words or in substance, did she tell you that she was at the Jug-Inn Barn in South Egremont, Massachusetts?

MR. KIMELMAN: I'm going to object to anything that she said as hearsay.

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2 THE COURT: Oddly enough we had a discussion of
3 this very question with Judge Mishler this morning,
4 the same question arose in Judge Mishler's courtroom
5 yesterday where a defendant put a brother on the witness
6 stand and attempted to get his explanation and thereby
7 his defense out through his brother, and every judge
8 agreed that was improper.

9 MR. KAPLAN: I object to losing in the Judge's
10 coffee hour.

11 THE COURT: Yes, you lost, it was sustained
12 and everybody agreed that Judge Mishler had done the
13 right thing by sustaining it, so I am pretty comfortable
14 in this ruling on the subject this morning.

15 You got an en banc ruling.

16 MR. KAPLAN: For purposes of this hearing,
17 Judge, I want to pursue it just for a couple of more
18 questions.

19 THE COURT: You may make your record.

20 MR. KAPLAN: All right, I want to make the
21 record, I mean there must be a higher Court than a
22 judicial coffee hour.

23 THE COURT: A higher court than the entire
24 bench sitting en banc?

25 MR. KIMELMAN: May I see that?

2 (Documents handed to Mr. Kimelman.)

3 MR. KAPLAN: Did Judge Costantino vote against
4 me also?

5 THE COURT: He wasn't there.

6 He would have voted against you.

7 MR. KAPLAN: That is probably true.

8 THE COURT: I really don't see any distinction,
9 maybe you can show me a distinction between, one, a
10 brother on the witness stand and an attempt to get your
11 defense in through him.

12 MR. KAPLAN: The Government is everybody's big
13 brother, Judge.

14 BY MR. KAPLAN:

15 Q Now, Agent Walsh, after you saw those papers,
16 you spoke to this defendant, and did you make an independent
17 investigation of any kind, that is with respect to those
18 papers or any statement which he made to you?

19 A Yes, I did.

20 Q Now, with respect to those papers, what did you
21 do, if anything?

22 A With respect to these papers, I did nothing.

23 Q Did you make any investigation at the Jug-Inn
24 Barn of any kind?

25 A No, I didn't.

Q Did you make any effort to ascertain whether or not she was in fact there on March 17th of 18th?

A No, I didn't.

Q Have you told us everything you know about the physical layout of the house?

A What else would you like to know about it?

Q I want to know if you know anything else, other than what you have testified to?

A Such as?

Q What time of day were you there?

A It was -- I was there during school hours because I know Miss Terri had a problem with her children about picking them up after school, so I would say sometime in the early afternoon, to my best recollection.

Q Did you see her parents?

A I saw them eventually, yes.

Q Do you know who lives in that house?

A Well, I asked Miss Terri who lived in the house and she told me she lived there with her parents and her three children.

Q How many apartments are there in the house?

A I wouldn't know that, just how many rooms there are in the house, I didn't search the house.

THE COURT: How many apartments, or is it a

two family house or --

THE WITNESS: I actually wouldn't know whether it is a one family or two family.

Q Do you know who the owner of the house is?

A I only know from what I learned from Miss Terri who the owner is.

Q You didn't make any investigation other than what she told you?

A That is right.

Q Now, did you make this Report of Interview dated April 8, 1975?

A Yes, I did, sir.

Q And to the best of your recollection, does that fairly, honestly and accurately represent the substance of your interview with the defendant, Janet Terri?

A I would say it does.

MR. KAPLAN: Would you mark this for identification?

THE CLERK: Interview of Janet Terri dated April 8, 1975 marked for identification as Defendant's Exhibit D.

(So marked.)

(Continued on next page)

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Walsh-direct

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Without reading all of this, in sum and substance, if you were asked to recount the interview with Janet Terri that you conducted on April 8, 1975, would it in substance be the same as what is contained in this report?

A It would.

Q Defendant's Exhibit D?

A It would.

Q You would testify to the contents of this paper under oath if you were asked?

A I would.

MR. KAPLAN: I have nothing further, your Honor.

THE COURT: Well, with respect to what she said by way of self serving statements and hearsay and anything she showed him would be hearsay, unless of course the prosecution is willing to concede the authenticity --

MR. KIMELMAN: We are not.

THE COURT: -- with respect to what he actually say, namely, he saw Miss Terri and Mr. Terri at the place and the description of the basement -- he can testify to that if you want to call him.

MR. KAPLAN: I think I made the record clear I will call him for whatever purpose I can. I think I am entitled to get this irrespective of the coffee

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THE COURT: think we are right on the evidentiary question.

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THE COURT: No --

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MR. KIMELMAN: Your Honor --

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THE COURT: It's concealing it from you and he made the evidence available to you. He showed you what he knows. You have an opportunity to prove that if you wish. He doesn't, not from the days of Judge Gallston down to Judge Platt.

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MR. KIMELMAN: I would also like to say the

Government offered no proof that she was there on the evening of March 17th.

MR. KAPLAN: The Government has affirmatively tried to prove she was there knowing that --

THE COURT: No.

MR. KAPLAN: If you read his opening to the jury and all the questions he asked, that he prepared so assiduously --

THE COURT: You did all right on cross-examination too.

MR. KAPLAN: Sure, I am a terrific lawyer. I don't go to jail no matter what happens.

He asked all the witnesses about Janet Terri's basement. He knows she was up in Massachusetts when they were putting the contraband in her basement and he is preventing it from coming out.

THE COURT: No, he is not.

MR. KAPLAN: All I can do is reserve it for a better coffee klatch.

MR. KIMELMAN: So there is no open disagreement in Court I ask Mr. Kaplan that he refrain from asking this witness in view of the Court's ruling.

THE COURT: He knows that. As a colonel in the Army he gets more than a wrist slap.

MR. KIMELMAN: He also is not to bring in these documents --

THE COURT: I told him what he can ask.

MR. KAPLAN: I don't need him to tell me what you told me.

THE COURT: Do you want to step down? Do you still want him here?

MR. KAPLAN: I'm going to call him when my turn comes. When you fit me back into the scheme of things.

THE COURT: Just remember to listen --

MR. KAPLAN: I became a colonel by listening to things.

THE COURT: All right. Bring in the jury.

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen. I am sorry we kept you waiting. We had one or two legal matters we had to clear up. We have been working in your absence.

All right. I guess we have Mr. Bovell on the stand.

MR. Bovell, you have been previously sworn.

LOUIS BOVELL, having been previously sworn, resumed the witness stand and further testified as follows:

DIRECT EXAMINATION

BY MR. SPERLING: (continuing)

Q Mr. Bovell, do you recall being questioned by the FBI at their office at Kennedy Airport?

A Yes.

Q Now, when you were questioned, did you notice whether anybody was taking notes?

A I believe so.

Q Could you tell us how long the questioning took?

A Approximately an hour and a half or so.

Q When the questioning was over, were you ever asked to sign a statement?

A No, I wasn't.

Q You knew at that time that you could have an attorney, is that correct?

A Yes.

Q Did you ask for an attorney?

A No, I didn't.

Q Was that because you felt that you wouldn't need one?

A Yes, it was.

Q Did there come a time when you asked for an attorney?

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A Yes.

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Q That was at the time you were arraigned, is

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that right?

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A Yes.

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Q That was when you had an attorney assigned?

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A Yes.

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Q I'm that attorney, is that correct?

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A Yes, sir.

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Q We talked this case over many times, is that

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right?

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A Yes, we have.

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Q Now, Mr. Bovell, how much schooling have you

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had?

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A I dropped out of high school..

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Q How much schooling have you had as far as high

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school is concerned?

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A About two years.

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Q What did you do when you left high school?

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A I had to go to work.

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Q Was that the reason you left school?

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A Yes, it was.

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Q At the time you were living in Massachusetts,

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is that correct?

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A Yes.

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Q You were living with whom?

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A My family.

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Q What did your family consist of?

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A My mother, grandmother, grandfather, aunt and
cousin.

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Q You were about 15 years old at that time, am I
right?

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A Approximately.

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Q You didn't go to work then as a truck driver?

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A No.

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Q As a matter of fact, you've had many jobs before
you became a truck driver?

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A Yes.

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Q Would you say you were steadily employed
practically all your life, Mr. Bovell?

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A Definitely so.

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Q No question in your mind?

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A None whatsoever.

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Q Now, M. . Bovell -- by the way, it seems everyone
knows you as Gunner.

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A Yes.

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Q Could you tell us how that came about.

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A My middle name is Gardner and 17 or 18 years

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ago one of the men on the job called me Gunner for short and

that's how I got that name.

Q Since then everybody has been calling you Gunner?

A Yes.

Q It got so I started to call you Gunner once?

A Yes.

Q Mr. Bovell, you testified that you had no knowledge of what was in those cartons?

A No, sir.

Q When you handled the cartons, were any of them opened?

A No.

Q If you knew that those cartons contained stolen merchandise --

THE COURT: Wait one second.

(The following took place at side bar.)

THE COURT: Where is your client?

MR. VERDIRAMO: Outside trying to find out why one critical card for March 17th is a made over card.

THE COURT: He is aware of the fact the case is going on?

MR. VERDIRAMO: Yes. We are trying to get a problem straightened out to save time.

THE COURT: Okay.

(The following took place in open Court.)

Bovell-direct

MR. SPERLING: I think I began asking a question,
may I have it?

(Whereupon the last question thus far given was
read by the reporter.)

Q -- of any sort would you have loaded those
cartons?

A No, sir.

Q Mr. Bovell, did you have any knowledge of any
kind of conspiracy that existed at the time that you loaded
these cartons on the 17th and 21st of March?

A No, I did not.

Q Now, Mr. Bovell, at the time you loaded these
cartons, did you have any other specific function but to
transfer these cartons?

A No, sir.

Q You had no right to take any of these cartons
and dispose of them, did you?

A No, I didn't.

Q Mr. Bovell, do you feel that you -- withdrawn.
Mr. Bovell, were you ever arrested?

A No.

Q It stands to reason you were never convicted
of any crime, is that correct?

A That is correct.

(Pause.)

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MR. SPERLING: Your Honor, I'm looking for a word.

Q Mr. Bovell, do you feel that you did everything that the Government asked you to do as far as questioning is concerned -- as far as answering questions?

A Yes.

Q As a matter of fact, did you go down to the FBI headquarters and submit handwriting specimens as dictated by Agent Sullivan?

A Yes.

Q Mr. Bovell, you didn't know there was any kind of conspiracy on March 17th or March 21st?

A No.

Q You didn't know anything about stolen watches on March 17th or March 21st?

A No, I didn't.

Q If you did know you would not have been a party to any such goings-on, am I correct?

A Definitely not.

Q On a lesser note, were you invited to the Artreiter wedding?

A No.

MR. SPERLING: I have no further questions.

MR. KIMELMAN: Your Honor, I know it's a little

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unusual but may I request a short recess?

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THE COURT: Yes.

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Don't discuss the case, ladies and gentlemen.

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(Whereupon the jury left the courtroom.)

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MR. KIMELMAN: Judge Platt, I'm sorry, I'm
feeling a little dizzy. I may have a touch of the
flu.

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THE COURT: Why don't you go and sit in your
office for a little while.

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MR. SPERLING: Did I do that, your Honor?

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THE COURT: You must have.

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(Recess taken at this time.)

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(The following occurred in the absence of the jury.)

THE COURT: I think, Mr. Kimelman, if you're in the shape that you think you are, that maybe we ought to adjourn until tomorrow.

MR. KIMELMAN: Your Honor, I feel under the weather. There is no question about that and while we're going through the direct, I was a little dizzy and I feel very warm right now. I don't know, maybe the courtroom is very humid.

THE COURT: I think we will adjourn until tomorrow.

MR. O'BRIEN: Your Honor, may I ask for one request? I have three character witnesses. Their testimony will be exceedingly short. I don't think that the cross-examination --

THE COURT: It's not right for either side to go ahead when there is an attorney who is sick.

MR. O'BRIEN: Your Honor, --

THE COURT: He wasn't following the testimony. He wouldn't have let Mr. Sperling ask all the questions in the form they were asked. I don't think it's right. I don't think it's fair.

MR. O'BRIEN: I would leave it up to Mr. Kimelman, your Honor.

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THE COURT: If the shoe was on the other
foot you wouldn't want it.

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MR. O'BRIEN: Your Honor, if there were
witnesses that were going to testify to facts that
have --

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THE COURT: You have witnesses on the witness
stand. They'll have to come back. They are under
subpoena.

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MR. KIMELMAN: Maybe we could start a little
earlier tomorrow, Judge.

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THE COURT: We'll start at 10:00 o'clock
tomorrow.

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MR. KAPLAN: I have a pre-trial conference
before Judge Weinstein at 10:30 in an FELA case
that I am fond of because I could make enough money
to compensate for this.

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THE COURT: I'll talk to Judge Weinstein,
if you want me to.

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MR. KAPLAN: I don't want to adjourn it,
Judge.

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THE COURT: It will be adjourned. We are
starting tomorrow at 10:00 o'clock.

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MR. KAPLAN: Maybe you could ask him to put
it on at 9:30?

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THE COURT: I'll see what I can do for you.

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MR. KAPLAN: Or 1:00 o'clock.

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THE COURT: Maybe you can go up and see what you can do.

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MR. KAPLAN: Did he vote against me in that coffee klotch too? I don't know if I want to talk to him anymore.

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THE COURT: All right. Let me get the jury in.

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MR. SPERLING: If a witness came down in the teeming rain, a character witness -- that's not nice to do this to me. After all, I'm entitled to a little respect. I don't get any in the courtroom, though.

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(Jury present)

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THE COURT: Ladies and gentlemen, Mr. -- as you know, -- a lot -- there is a lot of flu going around and it doesn't observe any boundaries and Mr. Kimelman says he now has a -- he felt dizzy for the last hour or so and he's now -- feels warm. I suspect he's got a temperature and may well have a touch of this instantaneous flu. I think under the circumstances the only fair thing to do is to adjourn the case until tomorrow, send him home and see if he can't get dosed up and get rid of it. Rather than have him stay here and get worse.

MR. KIMELMAN: I have no objection to waiting.

THE COURT: All right, go ahead.

CROSS-EXAMINATION

BY MR. CORBETT:

Q Mr. Bovell, I believe you testified on your direct examination that Donald Walsh was present when you were unloading this truck and loading it?

A Yes.

Q And he was on crutches, was he?

A Yes, he was.

Q Was there any conversation between Donald Walsh and you and the other persons present as to what was in these boxes?

A None at all.

MR. CORBETT: All right, no questions.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q When did you leave the Tic Toc on the night of March 17th, Mr. Bovell?

A Approximately 7:00, 7:15.

Q All right. Who did you leave with?

A Pete Areiter and Donald Walsh.

Q Those were the only two?

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A Yes.

Q Now, do you know the defendant Janet Terri?

A Yes, I do.

Q How long have you known her?

A I would say six, seven years. Possibly more.

Q Did you see her in the Tic Toc at any time
that day on March 17th?

A No, I didn't.

Q Now, was it Walsh who asked you to go to
Oceanside?

A Yes.

Q Or go somewhere?

A Yes.

Q And was Walsh on crutches then?

A Yes, he was.

Q Now, how did you go?

A We went in Mr. Areiter's car.

Q You and Walsh and Areiter went in Areiter's
car?

A Yes.

Q Did Areiter drive you?

A Yes, he did.

Q Now, before you started out, did anybody tell
you where you were going?

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A No.

Q And you then went in Areiter's car to a garage in Oceanside, did you?

A Yes.

Q Had you ever been in that garage before?

A No.

Q Did you know anybody associated with that garage?

A No.

Q What kind of garage is it?

A Automotive repair shop.

Q How big would you say it is?

A It's pretty big. I couldn't give you footage. It was a big garage.

Q It was big enough to accomodate a storage of trucks and automobiles, was it?

A Yes.

Q Now, when you got there, what did you see?

A Well, a few cars inside and a truck.

Q What kind of truck was it?

A It was a rental truck.

Q Was anybody else present at the garage when you got there?

A There was someone, but I don't know who it was.

2 Q Well, was the garage opened?

3 A Yes, it was open.

4 Q Were you able to drive into the garage or did
5 you park outside?

6 A Drove inside.

7 Q When you drove in, was the door to the garage
8 opened?

9 A Yes.

10 Q Is this garage on a public street?

11 A Yes. I would say so.

12 Q Was the traffic going back and forth when you
13 got there?

14 A It was truck traffic.

15 Q Now, when you got into the garage, you say you
16 saw only one other person?

17 A Yes.

18 Q What time of night was it by then?

19 A Roughly about 7:30.

20 Q Was it light out or dark out?

21 A It was getting dark.

22 Q Now, did you have any conversation with anybody
23 in the garage other than with Walsh and Areiter?

24 A No.

25 Q When you got to the garage, what if anything was

1 said by anybody?

2 A Well, I didn't speak actually to anyone. It
3 was just general conversation. I don't know what was said
4 at the time.
5

6 Q Well, did Walsh or anybody else say something
7 about unloading a truck there?

8 A I don't specifically remember if he did or not.

9 Q Well, what did you do when you got there?

10 A Well, the other truck -- another truck pulled
11 in. It was the Arcy paint truck. And backed up to the Ryder
12 truck.

13 Q Who was driving the Arcy paint truck?

14 A Mr. Burns.

15 Q Had you known Burns before this evening?

16 A Yes.

17 Q Had you known him from the Tic Toc also?

18 A Yes.

19 Q Now, when the Arcy paint truck came in and
20 backed up to the truck that was there, what happened then?

21 A I believe Pete and I got in the larger truck,
22 larger van, and started transferring the cartons.

23 Q Had somebody told you to do this?

24 A Not me specifically.

25 Q No. Had anybody told you or to Areiter?

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A That I can't say.

Q Who did all the transferring? Was it just you and Areiter?

A Myself, Areiter and Burns.

Q The three of you?

A Yes.

Q Did Walsh handle any of these boxes?

A No.

Q And the three of you transferred the cartons from one truck to the other, did you?

A Yes.

Q How long did it take?

A Forty-five minutes to an hour, I imagine.

Q Now, during any part of this period of time, was the defendant Janet Terri in that garage or anywhere near it?

A I didn't see her at all.

(Continued next page.)

Q What happened after the R-C Paint truck got loaded?

A Well, I left with Burns in the R-C Paint truck and we went to Lynbrook.

Q Who was driving the R-C Paint truck?

A Mr. Burns.

Q Did somebody tell you to get into the R-C Paint truck?

A No. I just figured he was riding by himself and he was going to go back to Lynbrook and that's where I was going.

Q Did you know where the R-C Paint truck was going?

A No, I didn't.

Q Do you know what route the truck took to get from Oceanside to Lynbrook?

A Vaguely, I can remember Lawson Boulevard. As far as I can remember, back onto Atlantic Avenue in East Rockaway right to Lynbrook.

Q What happened when you got to Lynbrook?

A Well, Burns pulled up to a house and backed in the driveway.

Q Now, are you familiar in any respect with the neighborhood where that house is located?

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A Not that particular area.

Q What kind of street was it?

A It was a normal -- I guess like a narrow city block.

Q Residential street?

A Residential. Yes.

Q What were the sizes of the lots that the houses were on, if you know?

A It was situated fairly close together.

Q Is this house in the middle of the block, the corner, or how would you describe it?

A I would say it was in the middle of the block.

Q Are there street lights on that block?

A I honestly don't recall.

Q You don't recall seeing any street lights?

A I don't remember if there are or not.

Q But you had never been there before, had you?

A No.

Q Now, you say Burns backed the truck into the driveway?

A Yes.

Q Where was Walsh and Areiter when this was going on?

A Mr. Walsh was standing outside. And I believe

Areiter was outside also.

Q Were they directing Burns in any way?

A Not that I could see. .

MR. KAPLAN: Can I have that exhibit, please?

Q Now, I am going to show you Government Exhibit 6.
Is that the house?

A I honestly couldn't identify it because it was
at night when I was there.

Q Do you know which side of the house the drive-
way was on?

A Facing the house, I believe it was on the left.

Q Now, I am going to show you this picture or
these pictures, Mr. Bovell. Do they show where the driveway
was?

A It shows it on the left side.

MR. KAPLAN: I would like to offer these.

MR. KIMELMAN: No objection.

THE COURT: Can you identify them as the house
in which --

THE WITNESS: Not as the house, no.

MR. KIMELMAN: Your Honor, we will stipulate
that that is Janet Terri's house.

THE COURT: All right.

MR. O'BRIEN: No objection.

THE CLERK: Two photographs received in evidence as Defendant's Exhibit E and F.

THE COURT: They are received by stipulation. Not by virtue of this witness's identification.

Q Now, take a look at these pictures. Do you see a boat in the driveway there, Mr. Bovell?

A Yes, I do.

Q Was there a boat in the driveway on March 17, 1975 when you arrived at this house in Lynbrook?

A Not that I remember.

Q Now, is the driveway that you saw the same dimensions as the driveway that you remember pulling into on March 17, 1975?

A I can't tell by the pictures.

Q All right. Can you tell by the pictures whether it's on the same side of the house where that boat is shown?

A Yes.

Q Now, how did the truck go in? Frontwards or backwards?

A It was backed in.

Q Now, after the truck was backed in did you see Walsh or Areiter do anything?

A Areiter went inside. Mr. Walsh was standing

outside.

Q He went inside the house?

A Yes.

Q And did you see him go in?

A I saw him in the house.

Q All right. Take a look at this picture,
Number 6.

By looking at it, can you tell us where
Mr. Areiter was at any particular time with relation to that
house?

A He was directly inside -- inside the door.

Q All right. I think you could put a Y on that
picture where you saw him.

Did you see him through the window where the
Y is?

A No.

Q Did you see him through the door?

A Through the door. After I got out of the truck.

Q Maybe you can indicate for us which door you
saw by putting a D there, please.

Now, did you see him in the doorway or in the
house itself?

A I would say it was two or three feet inside the
doorway.

MR. KAPLAN: Can I pass this around?

THE COURT: Yes.

Can you move along? I don't know what the purpose of all this is.

MR. KAPLAN: I am trying to move it, Judge.

Q Did you see anybody other than Areiter in the house?

A No, I didn't.

Q Did you see him talk to anybody?

A No.

Q Did you see anybody else talk to anybody in the house?

A No.

Q Now, what happened after that?

A We started unloading the truck.

Q Well, what did you do?

A I was outside. And Burns was passing cartons to me or bundles to me, I should say, and I was passing them inside.

Q To Areiter?

A Yes.

Q What was Areiter doing with them? Do you know?

A He was stacking them on the porch or in the living room somewhere.

1 [1156]
2 Q Inside the house?

3 A Inside.

4 Q Did you see Janet Terri at any time while this
5 was going on?

6 A No, I didn't.

7 Q Did you ever see anybody in the house other than
8 Areiter?

9 A No.

10 Q Where was Walsh at all these times?

11 A Outside.

12 Q Now, after you saw Areiter do this, stack them
13 on the porch, what happened after that?

14 A Well, the porch was getting crowded. So there
15 was suggestion -- I don't know by who -- to put them in the
16 basement.

17 Q Who put them in the basement?

18 A Areiter and Burns. I carried them from the
19 porch to the stairway.

20 Q Now, during this period of time did you see
21 anybody in the house at all?

22 A No, I didn't.

23 Q And did you see Areiter and Burns take these
24 cartons or these bags down the stairs?

25 A Yes.

1 [1157]
2 Q Did you yourself ever go downstairs?

3 A I don't believe I did.

4 Q Did you ever see where they stacked them or
5 put them downstairs?

6 A No.

7 Q How long did this take?

8 A I would guess another half-hour, 45 minutes.

9 Q What did you do when this operation was finished?

10 A Then I left and I was driven back to the Tic Toc.

11 Q In the paint truck?

12 A No. In Areiter's car.

13 Q Now, did you thereafter go back to that same
14 house, Mr. Bovell?

15 A Well, in the night of the 21st.

16 Q Now, with whom did you leave the Tic Toc that
17 night?

18 A Bob Schoenly.

19 Q And how did that happen?

20 A I had come in from work. And I was asked if I
21 had about a half-hour to help out. I said, yes. And the
22 next thing, Schoenly said, "You're going with me," or words
23 to that effect. So we got in his car, drove a few blocks,
24 parked his car, and he then picked up the truck and we drove
25 back to the house.

1 [1158]
2 Q Where was the truck?

3 A The truck was parked about a block, half-block
4 from the house.

5 Q Was it on the same street or a different street?

6 A No, it was on a different street.

7 Q Do you know the name of that street?

8 A I don't remember the name of the street. I
9 believe it was Denton Avenue or something.

10 Q Did you and Schoenly go in Schoenly's car?

11 A Yes.

12 Q Now, what happened when you picked up the truck?

13 A Schoenly drove to the house.

14 Q To the very same house?

15 A I believe it's the same house.

16 Q Did he back the truck into the driveway, too?

17 A No. He asked me to back it in. He said, "That's
18 why I need you here."

19 Q He wanted you to back the truck in?

20 A Yes.

21 Q And did you back the truck in?

22 A Yes.

23 Q Now, after you backed the truck in, did you see
24 anybody else at the house?

25 A Mr. Walsh was there.

1 [1159]
2 Q Was he there before you or after you?

3 A I believe he was there when I got there.

4 Q And who else?

5 A John Freudiger.

6 Q Yes. Anybody else?

7 A No.

8 Q Were those the only people that you saw?

9 A Yes.

10 Q Did you see anybody talk to anybody inside the
11 house at any time?

12 A No. I was never in the house.

13 Q Did you see Janet Terri in that vicinity that
14 day at any time?

15 A No, I didn't.

16 Q Did you see her at the Tic Toc on the 21st?

17 A No. I don't remember seeing her at all.

18 Q Now, what happened when you got there?

19 A There were cartons on the porch at the time.

20 And I was outside again. Cartons were passed to me, and
21 in turn -- passed to me, and in turn passed into the van.

22 Q When you described this porch, was it an
23 inside porch or an outside porch?

24 A Enclosed porch.

25 Q It's an enclosed porch?

2 A Yes.

3 Q Were you able to see what was on that enclosed
4 porch from the outside?

5 A No.

6 Q Now, who passed what to whom?

7 A Freudiger passed the cartons to me, and I passed
8 them in to Schoenly.

9 Q Schoenly put them on the truck?

10 A Yes.

11 Q How long did this take?

12 A About a half-hour.

13 Q What time of day was it?

14 A Somewhere between 7:00 and 8:00.

15 Q Was it light or dark out?

16 A It was dark.

17 Q What was -- what illumination, if any, was present?

18 Do you recall?

19 A Just like from the house, from inside the house.

20 That's all.

21 Q After the truck was loaded, what happened then?

22 A I left. I took Schoenly's car back to the

23 Tic Toc.

24 Q Did you take anybody back with you?

25 A No.

1 [1161] Q The other three remained there, did they?

2 A As far as I know.

3 Q Do you know what kind of truck this was?

4 A It was a step-in van.

5 Q What do you mean by a step-in van? How would
6 you describe it?

7 A It's like a delivery truck. Small, fully
8 enclosed.

9 Q Was it loaded through a back door?

10 A Yes.

11 Q Now, how far was this back door from the door
12 that you marked on Exhibit 6 with the D of the house?

13 A I guess four or five feet. I'm not sure.

14 Q Now, all the time this truck was being loaded,
15 was Walsh out on the sidewalk?

16 A Yes.

17 Q Where was Freudiger, was he outside the truck?

18 A He was inside.

19 Q Were you inside the truck, too?

20 A I was outside the truck.

21 Q And how about Areiter? Did he come outside?

22 A Areiter wasn't there.

23 Q Who was the fourth one there? Burns --

24 A Schoenly.

Q Schoenly, you, Freudiger and Walsh; is that correct?

A Yes.

Q Did you see who drove that truck away on that evening?

A No.

Q Was there anybody else present that evening other than the four people including yourself that you told us about that you saw?

A No one that I saw.

MR. KAPLAN: I have nothing further.

THE COURT: Okay, Mr. Kimelman.

CROSS-EXAMINATION

BY MR. KIMELMAN:

Q Mr. Bovell, how long have you been going to the Tic Toc?

A About 18 years. Seventeen, eighteen years.

Q That's about how long that you have been a truck driver; is that right?

A Roughly. Yes.

Q And how long do you know Bill Joyce?

A As of now, I'd say about almost two years, a year and a half.

Q You know him from the Tic Toc, right?

- 1 [1163] Bovell-cross/Kimelman 342a
- 2 A Yes.
- 3 Q How long do you know Donny Walsh?
- 4 A Eight, ten years. Maybe longer.
- 5 Q How do you know Donny?
- 6 A Through the Tic Toc.
- 7 Q Do you know Janet from the Tic Toc as well?
- 8 A She used to work there.
- 9 Q How long do you know Janet?
- 10 A I'd say 8, 9 years. Possibly longer, too.
- 11 Q All right. And did you ever see John Freudiger
- 12 at the Tic Toc?
- 13 A Yes.
- 14 Q How long do you think you know John Freudiger?
- 15 A Well, I have just met him recently.
- 16 Q Okay. But you had seen him previously?
- 17 A On occasion, yes.
- 18 Q How about Bob Schoenly? How long do you know
- 19 Bob?
- 20 A Since he started working there, which is about
- 21 a year, a year and a half.
- 22 Q Pete Areiter?
- 23 A Areiter I have seen there for -- I guess close
- 24 to a year.
- 25 Q And how about Tommy Burns?

1
2 A I put them in my car and took them to work
3 with me.

4 Q Now, after the loading was completed, you got
5 into the Arco truck; is that right?

6 A Yes.

7 Q Did you have any conversation with Tommy on
8 the way back to Lynbrook?

9 A Just general conversation, as far as I re-
10 member.

11 Q Did you discuss with Tommy at all what was
12 inside the boxes?

13 A No, I didn't.

14 Q No discussion at all?

15 A No.

16 Q Did you ask Donny before you left the garage
17 "Where are we going now"?

18 A No, I didn't.

19 Q Did you know where you were going when you
20 left the garage?

21 A In fact, I didn't even see him leave the
22 garage.

23 Q When you left the garage, you didn't know
24 where you were going either; is that right?

25 A Tommy told me we were going back to Lynbrook.

Q All right. Didn't --

A I believe.

Q Didn't Tommy tell you that you were taking the boxes to Donny Walsh's girlfriend's house?

MR. KAPLAN: I object to this, if your Honor please.

THE COURT: Overruled.

Q Isn't that what Tommy told you?

A I believe so.

MR. KAPLAN: I ask your Honor to instruct the Jury that this isn't binding on my client.

THE COURT: Have you read Count One?

MR. KAPLAN: I've read Count Two also, your Honor.

THE COURT: All right.

MR. KAPLAN: Is your Honor overruling the objection?

THE COURT: I am.

BY MR. KIMELMAN:

Q Did you know who Donny's girlfriend was at the time?

MR. KAPLAN: I object to this, if your Honor please.

THE COURT: Overruled.

1 [1186a]

Bovell - cross - Kimelman

2 THE WITNESS: At that time?

3 Q Yes.

4 A No, I didn't know who she was, who he was
5 going out with.

SF fols.

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7 (Continued on next page.)

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CROSS-EXAMINATION

BY MR. KIMELMAN: (Cont'd.)

Q Mr. Bovell, did you tell the FBI on April 7th that Donny's girlfriend was known to you and her name is Janet Terri?

MR. KAPLAN: I'm going to object to this and ask your Honor to strike it.

THE COURT: Overruled.

A That was later that I heard, before I was interviewed by the FBI. At that time I didn't know.

Q All right. But you found out later, is that right?

MR. KAPLAN: I object again and I'd ask your Honor to consider that I made appropriate motions because of this line of inquiry.

THE COURT: Overruled.

MR. KAPLAN: Am I to assume that your Honor denying my motion?

THE COURT: Denied.

MR. KAPLAN: All right.

BY MR. KIMELMAN:

Q Okay. So you did -- the answer, Mr. Bovell, is that you did tell the FBI on April 7th, that Donny's girlfriend's name was Janet Terri, is that right?

MR. KAPLAN: I object again, if your Honor please.

THE COURT: Overruled.

You may answer the question. Did you tell the FBI that you knew Donny's girlfriend was Janet Terri?

A That's what I had heard.

Q So when Tommy Burns testified that you rode back in the Arcy Paint truck with him, he was telling the truth, is that right?

MR. KAPLAN: I object to his characterizing one witness characterizing another witness's testimony.

THE COURT: Overruled. Overruled.

Q Is that right, Mr. Bovell?

A That's right.

Q Now, when you got to Janet's house --

MR. KAPLAN: What was that again? I didn't hear you. I object to the characterization, your Honor. He knows that isn't the fact.

THE COURT: He knows they didn't go to Janet's house?

MR. KAPLAN: No. He knows the characterization is inaccurate. Janet's house.

1 [1189]
2 THE COURT: When you got to the house to
3 where you were going.

4 MR. KIMELMAN: Very good.

5 BY MR. KIMELMAN:

6 Q When you got to the house to where you were
7 going, Donny and Pete already were there?

8 A Yes.

9 Q And did Tommy back the truck into the
10 driveway? Is that right?

11 A Yes.

12 Q And then you, Tommy and Pete unloaded the
13 truck onto the front porch?

14 A Right.

15 Q All right. And Donny was standing by?

16 A Right.

17 Q Okay. Did you know whose house you were
18 in at the time?

19 A No, I didn't.

20 Q All right. So you knew -- you didn't know
21 whose house you were in and you still didn't know what was
22 inside the boxes?

23 A I didn't.

24 Q Did you ask Tommy at that point or Donny
25 or Pete what this was about?

2 Q Pass it off?

3 A Yes.

4 Q You went through approximately a hundred
5 odd boxes, is that right?

6 A Roughly.

7 Q Okay. And you never noticed, never had any
8 discussion that the boxes were Flying Tiger boxes?

9 A No.

10 Q Now, if by some chance, Mr. Bovell, you
11 had noticed the boxes had Flying Tiger labels on them,
12 would you have said anything?

13 A Most likely.

14 Q But you never had that opportunity?

15 A No.

16 Q All right. Now, you put them into the
17 living room and the front porch, is that right?

18 A That's where they were put.

19 Q And you didn't see anybody in the house?

20 A No.

21 Q All right. And then it's decided to put
22 them down the basement?

23 A It was decided. I don't know by who.

24 Q Okay. And you then go into the house?

25 A Right.

1 unloaded them onto the porch? And then you had to take the
2 same boxes and move them again so they could go down the
3 basement, is that right?
4

5 A That's right.

6 Q Did you ask Donny at any time what he meant
7 about your being taken care of?

8 A No.

9 Q Never asked him at any time what was in
10 these boxes?

11 A No.

12 Q Did you ever ask him why all these boxes
13 were going into Janet's basement?

MR. SPERLING: I object.

14 MR. KAPLAN: I object again, your Honor.

15 Q You now know that house to be the house of
16 Janet Terri.

17 MR. KAPLAN: I'd like you to rule on my
18 objection.

19 THE COURT: I will rule. It's up to the
20 jury to determine whose house based on the evidence.
21 I will allow the question to stand with that
22 qualification.

23 BY MR. KIMELMAN:

24 Q Did you ask anybody why you were moving
25 the boxes into this basement?

1 [1200]
2 house, did you ask Donny or Pete or Tommy what these boxes
3 were?

4 A No, I just asked for a ride back to the Tic Toc.

5 Q Did you ask what you were going to get paid
6 after the job was finished?

7 A No.

8 Q You did not?

9 A No.

10 Q After the next few days, Mr. Bovell -- strike
11 that.

12 You heard Pete Areiter and Tommy Burns testify
13 as to the unloading into Janet Terri's house?

14 MR. KAPLAN: I object to the characterization,
15 which he does over and over again.

16 THE COURT: I already ruled on that
17 objection. You don't have to make it again.

18 Q Is that right?

19 A Again, sir?

20 Q You heard Pete and Tommy testify as to how
21 you unloaded the boxes into Janet's house, is that correct?

22 MR. KAPLAN: I object again.

23 THE COURT: Overruled.

24 A Yes.

25 Q They testified essentially as you did as to

1 [1205]
2 A Yes.

3 Q You drove that van around the corner?

4 A I didn't drive the van.

5 Q You didn't drive?

6 A No.

7 Q Who drove it?

8 A Schoenly.

9 Q On your way over to that house, did you have
10 any discussions with Bob, where we are going?

11 A No.

12 Q You didn't ask him where you were going?

13 A No. I don't know if it was mentioned. We were
14 just going around the corner or not, I don't remember.

15 Q Were you surprised, Mr. Bovell, when you
16 ended up at the very same house you had been in on Monday of
17 that week?

18 MR. KAPLAN: Objection.

19 THE COURT: Overruled.

20 Were you surprised?

21 THE WITNESS: At that time, I didn't realize
22 it was the same house. It was at night.

23 THE COURT: You mean when you got there you
24 didn't realize it was the same house?

25 THE WITNESS: Not when he pulled up in front

1 of the house.

2
3 Q When did you realize it was the same house?

4 A When I went in the driveway.

5 Q Then you saw it was the same house?

6 A I assumed it was.

7 THE COURT: Then were you surprised?

8 MR. KAPLAN: I object to your Honor's
9 question.

10 THE COURT: Wait a minute. He didn't
11 answer it before.

12 Then, were you surprised?

13 THE WITNESS: Not at that time, no.

14 MR. KAPLAN: Now, can I object to your
15 Honor's question and move to strike it out?

16 THE COURT: Yes. Your motion is denied.

17 Q Did you then ask Bob Schoenly why you were
18 back at the same house?

19 A No. All he said was we have to load some boxes.

20 Q You knew what boxes he was talking about,
21 didn't you, Mr. Bovell?

22 A No, I did not.

23 Q You didn't even know you were going to move
24 the same boxes, is that what you are telling us?

25 A That's right.

1
2 Q Mr. Bovell, isn't it a fact that you have an
3 interest in these proceedings?

4 A What interest?

5 Q Whether you are convicted or acquitted?

6 A Of course.

7 MR. KIMELMAN: I have no further questions.

8 THE COURT: We will take a five minute recess.
9 Don't discuss the case.

10 (A recess taken at this time.)

11 THE COURT: We have to step up the pace. We
12 are going to finish this case today including summations.

13 MR. O'BRIEN: I don't think that is fair.

14 THE COURT: That is what the schedule is.

15 What do you have?

16 MR. VERDIRAMO: I have one witness and one coming
17 in.

18 THE COURT: What is the stipulation?

19 MR. KIMELMAN: I am willing to enter into two
20 stipulations with Mr. Kaplan, one that if a representa-
21 tive of the Jug End -- well, we don't have to go through
22 that. I am willing to stipulate Janet Terri was at the
23 Jug End at South Egremont, Massachusetts on March 17th
24 and 18th, 1975.

25 I also agree to stipulate that the house, and

6 1 whatever address it is, Harriet Place, belongs to
2 the parents of Janet Terri.

3 THE COURT: And she resides there.

4 MR. KIMELMAN: Yes. .

5 THE COURT: All right.

6 MR. O'BRIEN: Your Honor, I introduced the
7 statement made by Mr. Grimsley, Defendant's Exhibit B,
8 as a statement that he gave to the FBI. And in going
9 over that statement last night, there is a part of
10 the statement on the last page that has the pedigree
11 and there is an arrest record. I wasn't aware that
12 that was in there until I read the statement last
13 night. None of those arrests are crimes, they are all
14 from impaired driving --

15 THE COURT: It's up to what Mr. Kimelman says.

16 MR. KIMELMAN: He also introduced the exhibit
17 before he put Mr. Grimsley on the stand.

18 MR. O'BRIEN: That is true.

19 THE COURT: If you introduced the exhibit,
20 maybe you induced the prosecution to consent by virtue --

21 MR. O'BRIEN: If that is so, I move to strike
22 the exhibit.

23 THE COURT: You already read from it.

24 MR. O'BRIEN: I have not.

25 MR. KIMELMAN: I have, your Honor.

[1294]

BD lpmal

AFTERNOON SESSION

(Whereupon, the jury entered the jury box at 2:20 p.m.)

THE COURT: Ladies and gentlemen, we are about to start summations.

Based on my donference with counsel just before luncheon recess, it appears that summations may run a little bit late. I think I will be in a better position to tell you just how late at the recess this afternoon, at which point I will, if you wish to make -- if any of you wish to have calls made to your homes to say just when you will be home, we will arrange for those. You can prepare notes and I will have somebody make the appropriate calls.

I would like to finish today so I can charge you the first thing tomorrow morning and give you a full day deliberating rather than have you start in the middle of the day when you may get hung up late at night and so forth. I would like to do it if it is possible.

Is there anybody on the jury that this will create a hardship for if we sit until 6:15 or 7:00 tonight?

All right. I think we will try to proceed that way. You prepare your notes to anybody you want to be

2 1 called and at the afternoon recess we will make the
2 arrangements.

3 Bear in mind the statements of counsel in
4 summation are not evidence. You have heard the evidence
5 from the witness stand the the exhibits which have
6 been marked in evidence. These are merely arguments
7 by counsel to give you their point of view to what
8 has been proved or what has not been proved as the
9 case may be; and that you should listen to the summation,
10 but bear in mind that they are not evidence.

11 Under the new rules of the -- which are applicable
12 to all Federal courts, the prosecution sums up first,
13 then the defendants, then the prosecution is entitled
14 to rebuttal.

15 All right, Mr. Kimelman.

16 MR. KIMELMAN: Thank you, your Honor.

17 May it please the Court, counsel for the
18 defense, Mr. Foreman, ladies and gentlemen of the jury:

19 The case that you have been listening to over
20 the last two weeks is more than a case of a theft of
21 a few watches. It is not a simple little burglary.
22 It involves the theft of over 41,000 watches. It
23 involves the theft of watches worth over \$700,000.

24 The only reason I mention that to you again is
25 that we understand that we are dealing with a very

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Kimelman - Summation

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serious matter. A very serious crime. And it is not
a laughing matter.

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Now, this is more than a case of stolen watches.
This is a case of men and women who saw a chance --
saw an opportunity to make a fast buck.

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This is a case, ladies and gentlemen, of human
greed. It is a case of individuals who came in
contact with stolen merchandise, who asked little or
no questions, who got involved and who broke the law.

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You have to take the evidence that you have
heard in this case not in the context of the isolation
of this courtroom without windows. You have to take
the evidence that you heard and put it in the context
of the real world, of what happens in everyday life
to each and every one of you. You have to take it in
the context of all your experiences on this earth,
what you have learned, what you have observed, what
you have heard. And don't let yourselves get trapped
into technical legal arguments. But you examine the
testimony from that stand, the evidence presented
physically in front of you, and you put it in terms
of what happens in real life.

This case, ladies and gentlemen, is a case of
credibility. You have to take the credibility of

Kimelman - Summation

each and every individual who went on that witness stand and evaluate that individual as to whether that individual was telling the truth when they testified or were they lying to you. Every single witness who got on that stand was sworn to tell the truth. And you have a right to expect that they tell you the truth. But you have to make that decision as to whether they are telling the truth.

And it is not as difficult a task as you might think. It doesn't necessarily require you to have the wisdom of a Solomon. It only requires you, ladies and gentlemen, to use your common sense. Take the common sense that you brought into this courtroom. Take the sum of each and every one of your personal experiences before you came into this courtroom. Take the sum of each and every one of your understanding of human nature. If you do that, you will see that it is not that hard to come to a determination whether someone was telling you the truth or not.

My job in this summation is to argue the evidence, to suggest ways that you should evaluate the testimony and the evidence. What I am going to ask you to do over the next hour is to reason with me. Go through the evidence, go through the testimony and reason as

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Kimelman- Summation

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to does it make sense, did it have the ring of truth
3 to it, do you believe it.

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Now, I suggest to you, ladies and gentlemen,
that it is uncontradicted that on the morning of
March 17, 1975 that two C containers of Timex watches
were stolen from Flying Tigers Airlines, and that these
watches were approximately 41,000 in number; that they
were valued over \$700,000; and that they were discovered
missing at approximately 8:30 in the morning.

11

Now, I think -- strike that.

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I suggest to you, ladies and gentlemen, that it
is uncontradicted that Bill Walsh was at work during
the time the watches were discovered missing. And
I suggest to you that it is uncontradicted that Bill
Joyce opened up the C containers that has the Timex
watches which were eventually missing; and that Bill
Joyce was not assigned to the crew that was unloading
those watches; that Bill Joyce had no instructions
from the superior he was working under to open those
containers; and that he certainly had no instructions
from the supervisor who was in charge of the aircraft
from which they were being unloaded.

Now, this case does not require you to deliberate
as to the guilt or innocence of any of these individuals

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1 [1299]

Kimelman - Summation

2 concerning the theft of the watches. Only as to the
3 possession of the watches after they were stolen. It
4 is not necessary to prove that Bill Joyce or anyone
5 else here stole those watches. But I am going to
6 prove that to you, ladies and gentlemen, because what
7 happened on the morning of March 17th was that Bill
8 Joyce and at least one other individual of Flying
9 Tigers got ahold of those watches and they put those
10 watches into this Ryder truck, Government Exhibit 11,
11 which was also taken at the same time; and that they
12 went to the Tic Toc Bar in Lynbrook.

13 : You know the Tic Toc is right here.

14 : And came from Kennedy Airport over to the
15 Tic Toc. And we know that it takes approximately
16 25 minutes.

17 Now, there is no doubt that Bill Joyce was at
18 the Tic Toc on the morning of March 17th, 1975. His
19 own statement read to you -- I will withdraw that.

20 His own interview with the FBI which was read to
21 you confirms that he himself says that he went to the
22 Tic Toc after work.

23 Bob Schoenly testified that Joyce arrived at
24 approximately 10:30. We know that Pete Areiter also
25 arrived at the Tic Toc at approximately the same time.

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[1300]

Kimelman - Summation

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And that Bill Joyce asked Pete Areiter to give a friend of his a ride back to the Flying Tigers Airlines and to use Bill Joyce's car. And Areiter did that.

And I suggest to you that the reason why this happened was that one of these individuals, Joyce or the other fellow, was driving the Ryder truck. One of them was driving Joyce's car. And they drove that car and that truck to the Tic Toc; and that other individual had left his car back at the employee lot of Flying Tigers and he now needed a ride back to the Flying Tigers, because we know that when Bill Joyce walked into the Tic Toc --

MR. VERDIRAMO: I must object. That is not the evidence. There is not one scintilla of evidence like that in this case.

THE COURT: This is argument. This is argument.

MR. VERDIRAMO: I think the argument --

THE COURT: Based on the evidence. I will allow it. He is suggesting this to the jury.

MR. KIMELMAN: We know that when Bill Joyce walked into the Tic Toc, he tells Bob Schoenly that he made a hit at the airport. And I don't think it requires any further explanation as to what he meant. Because he tells Bob Schoenly that he had the commodity

[1301]

Kimelman - Summation

in a truck and he had the truck outside.

Now, Bill JOyce's problem in this case, ladies and gentlemen, I suggest to you, the reason why he is sitting there, is that the problem is Bill Joyce has too big a mouth and that he couldn't wait to get to the Tic Toc to tell his friend Schoenly about what he did. And he wasn't too discreet.

Now, I want you to keep that in mind about Bill Joyce.

We know Areiter leaves. And we know from Bob Schoenly that Joyce leaves sometime within an hour or so after he arrived. And if you put two and two together, you know that Joyce went back to the airport, interviewed by the FBI concerning the theft.

Mrs. Cullen testified that AGent Sullivan arrived at around 11:00. Agent Sullivan testified that he interviewed seven or eight employees before he got to Joyce. One of the defense witnesses called by Mr. Verdiramo said that he saw Joyce at Flying Tigers at about 12:00 o'clock. We know when Joyce was done, Donny Walsh comes into the bar, and that Bob Schoenly tells Donny that his cousin had gotten something from the airport. And Donny Walsh replied that he wished that his cousin had waited for him to arrive because

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1 [1302]

Kimelman - Summation

2 he knew a place where he could keep the stuff. And as
3 we all know by now, he did know a place to keep the
4 stuff.

5 The day goes on. At approximately 1:00 p.m.
6 Tommy Burns testified that he came out of work and went
7 to the Tic Toc. And Schoenly testified that Burns
8 arrived around 1:00 p.m. And shortly thereafter,
9 sometime in the early afternoon, both Joyce and Walsh
10 are at the bar, and Pete returns as well. And Pete
11 and Tommy are asked by Joyce if they could help move
12 some boxes that night.

13 And I suggest to you, ladies and gentlemen,
14 that if Bill Joyce came in the bar and told Bob
15 Schoenly that he made a hit at the airport, that it
16 did not take very long for the word to spread; and
17 that Tommy Burns and Pete Areiter, while they may not
18 have known exactly what was involved, that it was
19 watches or how many watches, but at that point in time
20 they knew they were involved in something illegal;
21 that they were going to be helping Billy Joyce move
22 the commodity that he had taken from the airport.

23 And we have to put this in the context of the
24 real world. Understand that these men are all drinking
25 buddies.

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[1303]

Kimelman - Summation

Now, I don't know if the ladies on the jury can understand drinking buddies. But perhaps ladies have drinking buddies as well. But understand that they were all friends. They saw each other on a regular basis. They drank together. There are no secrets with these men.

There was no question as to what was going on here. And you have to strain your credibility to believe that it was anything else but the way that was just described.

Now, arrangements are made to meet at the Tic Toc at 7:00 p.m. that night. We know that at 7:00 p.m. Areiter, Burns and Walsh are at the Tic Toc. Mr. Bovell as well.

And Mr. Bovell testified this morning that he had been asked by Donny Walsh to participate and that he would be taken care of. Mr. Bovell's own words.

And what happens next? There is not really very much doubt about, because Mr. Areiter testified about it. Mr. Burns testified about it. And Mr. Bovell testified about it.

They leave the bar. Donny Walsh is given the instructions. He tells Areiter to drive down here to a garage in Oceanside. Tommy Burns is following in

[1304]

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Kimelman - Summation

1 this R-C Paint truck. And they pull up outside of
2 this garage, as shown in Exhibit A, which we now know
3 is the garage of Morton Hanan, owned by Morton Hanan's
4 father. And they drive Areiter's car and the R-C
5 Paint truck inside that garage. This. As pictured
6 in Government's Exhibit 9. No doubt about that. Inside
7 that garage they see this Ryder Rent-a-Truck. The
8 Ryder Rent-a-Truck that was stolen that morning. And
9 on the truck is still the watches.
10

11 And what do they see, ladies and gentlemen, when
12 they open up that Ryder truck? They see 117 cartons.
13

14 (continued next page)
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[1305]

Kime'man-summation

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2 MR. KIMELMAN: (Continuing.) Now, you only
3 have four cartons before you so you will have to
4 use your imagination. But if you look at
5 Government Exhibit 13 and Government Exhibit 14
6 and get an idea of what the cartons look like
7 without the wrapping paper, just so you get an
8 idea of what the bulk and the size of it is. And
9 each of those cartons was wrapped with this
10 wrapping paper. I want you to examine this
11 wrapping paper very carefully. You look on the
12 wrapping paper contained in Government Exhibit 24
13 and you first of all see a big white label. It
14 says, fragile, with care. Foreign writing. You
15 see it appears to be an address of Lawrence
16 Forwarding Corporation, JFK, New York, New York,
17 Account TC, Waterbury, Connecticut. And more
18 important than that, on each and every carton you
19 will see this yellow label. It is not a small
20 label. Written in print, which you don't need a
21 magnifying glass. And red letters. And on the
22 top of each of those letters, Flying Tigers Line,
23 air freight.

24 Each and every box, 117 boxes, and they
25 each had that type of wrapping and surrounded by

jb/ss
lpm2

[1306]

Kimelman-summation

this yellow material to bind.

Now, each of these defendants knew Bill Joyce for a while. And I suggest to you that each knew that Bill Joyce worked for Flying Tigers Airlines, and that Mr. Areiter and Mr. Burns had been asked by Bill Joyce to help him move some boxes.

And what do you think the first thing they are going to think of when they see 117 boxes with Flying Tigers Lines on them? What do you think? Where do you think they are coming from?

And what is Mr. Bovell to think if he saw 117 boxes with Flying Tigers Lines written on them. They loaded these boxes. And it takes them 35, 40 minutes. And examine in your own mind in the context of the real world, what is going on here.

You are in the middle of a garage that they have never been in before that night, and they are loading boxes -- 117 boxes that look like that, with the Flying Tigers label on them from a rented truck into a paint truck, and taking them to some unknown destination that only Donny Walsh knows about. And ask yourselves if any one of you were put in that position, would

[1307]

Kimelman-summation

a question spring to your mind, what is in those boxes; what am I doing here; where are they going.

In any event, the boxes are loaded. Donny Walsh tells everybody to go to Lynbrook, go to Janet Terri's house. And her testimony -- that Janet Terri was the girlfriend of Donny Walsh. And they get to Janet Terri's house. They go back up toward Lynbrook and they go to Janet's house. They pull up in Janet's house, which, as you know by now, is Government Exhibit 6, back the truck into that driveway. They start unloading the boxes into this enclosed porch.

Now, what are they doing loading or unloading 117 boxes with Flying Tigers on them into Janet Terri's house on Monday evening, March 17th.

The boxes go into the porch and living room, taking most of it up. So much so that something happened that somebody decided that it took up too much room, as obviously it must if you can imagine 117 boxes in the living room, that they should go down into the basement of that house.

And can you imagine that one of your friends or associates or an acquaintance came

[1308]

Kimelman-summation

to your house with 117 boxes wrapped like this -
ask them, why are you putting them in my house;
what are they doing here; what's it about.

And if you were moving 117 boxes wrapped
like this and you hadn't reached any conclusions
so far as to what is going on when you started
loading boxes like this in someone's basement,
do you at least have something enter your mind as
to what is going on here? Would you ask a
question, "What am I doing? What is it about?"

You would if you knew nothing about it.
Of course, if you knew that you were loading
boxes of watches, or if you knew you were dealing
in stolen material, you wouldn't have to ask those
questions, would you? Because you already knew
the boxes get loaded into Janet's basement. And
we know that when Mr. Areiter and Mr. Burns
testified to what had happened that night, they
were telling the truth.

Mr. Bovell took the stand and he told you
that's the way it happened.

(Continued next page.)

GR/rp
2pm

[1309]

Summation - Kimelman

371a

MR. KIMELMAN (Cont'd): Now the next few days, ladies and gentlemen, several of the Government witnesses testified there was a lot of conversation in the Tic Toc about the theft from Kennedy Airport, as you can well imagine that there would be.

Think of it in terms of the real world. can you imagine if you worked for a company and that while you were working for that company, \$700,000 worth of goods were stolen from the company while you were at work, would you talk about it with your friends? Especiall when it was in the newspapers? Especially when it involved such a large theft?

Of course you would. And especially if you had been questioned by the FBI as to what you were doing on that morning.

I suggest that among the fraternity of individuals who patronize the Tic Toc Bar, that this was the subject of a lot of conversation.

And let's accept Mr. Bovell's assumption for one moment, ladies and gentlemen. Can you imagine that even if Mr. Bovell had no idea what was going on on Monday, that when he realized or when

Summation - Kimelman

1 he heard the next day about the theft from Timex --

2 MR. SPERLING: Now, Your Honor, there is
3 no testimony that Mr. Bovell heard any such state-
4 ment.
5

6 I don't like to interrupt, but --

7 MR. KIMELMAN: Your Honor, that's correct.
8 There is no testimony that he heard.

9 THE COURT: That is my recollection, ladies
10 and gentlemen.

11 MR. KIMELMAN: If I -- I misspoke myself,
12 ladies and gentlemen. I apologize.

13 Mr. Bovell testified he doesn't know whether
14 he was in the bar or not in the next few days.

15 I suggest to you that he couldn't help but
16 hear about it or reading about it, and that even
17 if you believe his story, that he didn't know
18 what was going on on March 17th, over the next
19 few days he had to put two and two together.

20 That's how simple it was to do.

21 We know the next few days that Joyce tells
22 Schoenly that he's unable to get rid of the watches.

23 You can well imagine that he'd been having
24 trouble getting rid of the watches with all the
25 publicity.

[1311]

Summation - Kimelman

We know that on Friday, March 21st, four days later, at first Bill Joyce calls Tommy Burns and asked him if he could help move the watches again, and that Burns can't do it on that Friday night because he's supposed to meet with his prospective in-laws.

We know that on Friday afternoon, that Don Walsh and Janet Terri go to the Tic Toc with Bob Schoenly tending bar.

There is no reason not to talk to Bob Schoenly about it because he knew about it from the very beginning, and that Schoenly has a conversation with Walsh and Janet, and that Schoenly testified at Page 88, "Walsh instructed me to go to Hub Rental to rent a step-in van."

Hub Rental had been called by Janet Terri to see if they had the type of van that Walsh wanted.

On Page 89, question by the Court:

"And Terri had called?"

Mr. Schoenly replied, "Had called and said that when I go down, say it's my sister that called and I should rent a truck."

And that Donny Walsh gave him a hundred dollars for a deposit, and that he left Janet Terri,

[1312]

Summation - Kimelman

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2 who had been previously a bar maid at the Tic Toc
3 in charge of the bar and that's obviously not very
4 difficult to believe, and he went from the Tic
5 Toc, which is here, a few blocks over to Hub
6 Rental, found out that he needed more money for a
7 deposit.

8 He had to go back, got additional money from
9 Don Walsh and Janet and went back and he rented
10 the truck.

11 And how do we know that he did that?

12 Government's Exhibit 2, which is the rental
13 agreement, sets out the deposit, sets out the
14 truck was rented on March 24th, has Bob Schoenly's
15 signature on it.

16 Ask yourselves what other explanation is
17 there for Bob Schoenly renting that truck?

18 Why else would he rent a truck on that day?

19 Put that in connection with the rest of the
20 testimony and you will see there is only one answer
21 why he would rent a truck. That was at the request
22 of Walsh and Terri.

23 The boxes are to be moved out of Janet's house.
24 7:00 p.m. that night Schoenly goes with Gunner,
25 Mr. Bovell, over to Janet's house. They have the

Summation - Kimelman

Hub truck, back it into Janet's driveway and they meet Mr. Freudiger there.

And you recall that Mr. Freudiger told the FBI that he wasn't there the night of March 21st, that he had been in the Tic Toc all night long.

I suggest to you that posed a question as to the credibility of Mr. Schoenly, as to whether Mr. Schoenly was telling the truth when he said Freudiger was there that night, as to whether Mr. Schoenly was telling the truth about anything that matters, as to whether Mr. Schoenly was trying to involve innocent people in this case, we found out that when Mr. Bovell got on the stand that he confirmed that Mr. Freudiger was there on March 21st and I suggest to you that tells you quite a bit, ladies and gentlemen, about the credibility of Mr. Schoenly.

Now, the watches are now on the front porch, but the boxes have changed appearances. The wrapping paper is now off the boxes and we know that the wrapping paper has now gone into plastic bags, plastic bags eventually recovered from Mr. Nittyi's garage, bags pictured in Government's Exhibits 3 and 4, that the wrapping paper and this binding goes

Summation - Kimelman

into these bags.

I suggest to you that when those bags were in the basement of Janet's house, during those four days, somebody went down in that basement. They took the wrappings off each and every one of those boxes, that they marked on some of the boxes what the contents were, because Mr. Nitti testified that when the boxes got to his garage, he remembers seeing the word "Lady" or "Ladies" on at least one of the boxes.

I suggest to you that what Mr. Nitti was talking about is the kind of writing that is on Government's Exhibit 22, where it says "Small, Lady, White 300."

I suggest to you that the 300 means how many watches are in this box, and that means, ladies and gentlemen, that somebody was in the basement of Janet's house taking inventory of the haul and seeing what was there, seeing what they had actually gotten.

So the boxes come out. They are loaded into the Hub truck and Mr. Schoenly tells you that he puts them on the street in Island Park, somewhere down on the bottom of the map, but not shown on

Summation - Kimelman

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2 that map. And ask yourselves, is somebody in
3 the basement of Janet's house unwrapping these
4 boxes, writing an inventory on these boxes without
5 her knowing about it?

6 It was stipulated that Janet Terri was in
7 Massachusetts at an inn on the 17th and 18th.
8 No Government witness testified that she was
9 there.

10 MR. KAPLAN: I'm going to object to this,
11 if your Honor please.

12 He stipulated to it.

13 THE COURT: No. He's saying no Government
14 witness testified that she was near the Tic Toc.

15 MR. KIMELMAN: I'm sorry. I mean at the house,
16 your Honor.

17 I didn't mean to suggest that she was --
18 nbody testified that she was at the house on the 17th,
19 but what was she doing on the 19th, on the 20th and
20 on the 21st?

21 I suggest to you that Janet Ferry also saw
22 the opportunity to make some quick money and she
23 found out or she was told or maybe she even planned
24 with Donny Walsh --

25 MR. KAPLAN: I object to this, your Honor.

Summation - Kimelman

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2 It is impermissible argument based on nothing.

3 THE COURT: No. It's allowable.

4 MR. KIMELMAN:--to let those boxes stay in
5 her house and to help Bob Schoenly rent the truck,
6 and every other defendant in this case saw the op-
7 portunity to make a quick buck without worrying
8 about the consequences, without concerning them-
9 selves for one minute that they were breaking the
10 law.

11 Over that weekend we know that the publicity
12 continued about these watches, that Schoenly
13 showed Burns in the presence of Terri and Walsh
14 a reward notice in the paper about the watches.

15 I suggest to you how much news these watches
16 were making at the time.

17 Now, on Monday, March 24th, in the afternoon,
18 Ed Boyle gets a visit at his bar, which is over
19 here, from Donny Walsh and Bill Joyce, and Bill
20 Joyce takes Boyle in the back room, tells them
21 that he has the watches that were stolen from the
22 airport, which Boyle, of course, knew about,
23 since Boyle's bar is not far from the airport, be-
24 cause of the publicity, and he asked Boyle if Boyle
25 has an outlet for the watches, if Boyle can help him

Summation - Kimelman

get rid of the watches..

I suggest this again is a problem of Bill Joyce, not being the smartest criminal in the world, is getting desperate and he's stuck with all these watches, and he hasn't gotten a single sale, no matter what he's done before to get rid of the watches.

He now goes to Boyle. We know the same day that Bob Schoenly is told to extend the rental for the truck, that he originally got it for two days and he had it extended for one more day, which would be that Monday, because he had taken it out on a Friday.

We know that Bill Joyce calls Tommy Burns and again asks him if he could help him with the watches and Joyce explains that he wants to get the watches off the street and he needs a place for them.

Burns goes to his friend Leonard Nitti, who has a garage on Randall Avenue, and that he explains to him that he wants to rent the garage and that shortly thereafter, at about 7:00 o'clock on Monday, March 24th, Joyce and Burns pull up in this Hub Rental truck and that Joyce, with his big mouth

Summation - Kimelman

again, explains to Nitti that these are the watches taken from the airport.

There is no big secret about it. He promises Nitti \$1,000 for two days' rental.

I suggest to you, since he thought the watches were worth half a million dollars, he could afford to be generous with anybody who helped him out.

You think about that, ladies and gentlemen, a thousand dollars for two days' rental of a garage. And why does he offer him a thousand dollars? Why does he tell him that these are the watches? Because there is not going to be any real secret about it, because there has been a lot of publicity because there are 117 boxes and five bags of packing material involved, and that demands an explanation from anybody, whoever he might be.

And you ask yourselves when you consider credibility whether that 24-year old, Mr. Nitti, got on the stand, was he lying?

Ask yourselves if you can believe that that man was lying when he told you that's what happened.

Ask yourselves what motive Mr. Nitti has to lie about it. He's not trying to protect Burns

Summation - Kimelman

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2 because he told you that in his statement to the
3 FBI, he said that Burns was involved. He wasn't
4 trying to protect Areiter. .

5 In the statement to the FBI, he mentions
6 Areiter.

7 I suggest to you that Mr. Nitti, under
8 cross-examination, came across as telling the truth,
9 that he was visited by Bill Joyce. He was offered
10 a thousand dollars by Bill Joyce to rent that
11 garage for two days and that's just the way it happened.

12 Now, on Wednesday, March 26th, which is
13 two days later, Joyce asked Burns to go to Nitti's
14 garage and get some samples, presumably to help
15 him sell the watches, and that Pete Areiter and
16 Burns go to the garage.

17 Nitti is there and he confirms it. They
18 take some samples. Areiter takes some watches
19 for himself, so we know at least that some of the
20 boxes are open now.

21 They go back to the Tic Toc. Walsh and
22 Joyce are sitting at the Tic Toc. Donny Walsh
23
24 sticks out his hand and Joyce -- excuse me -- Burns
25 gives him the sample watches.

Summation - Kimelman

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2 It take us to Thursday, March 27th, a sit
3 down for all of these defendants, the accomplices who
4 testified, because Ed Boyle receives a phone call
5 on the morning of March 27th from a man name
6 Joe and we all know now is an undercover New York
7 Port Authority police office, and that a meeting
8 is set up and that Boyle tells Joyce he's got a
9 potential buyer and that Joyce and Burns and Boyle's
10 girlfriend go to Ferrucci's, which is another bar in
11 Queens, also indicated on the map, Government's
12 Exhibit 1, and in that bar on March 27th, the deal
13 was struck.

14 And in that bar it is agreed that Giordano,
15 posing as the buyer, will buy the watches for \$75,000.
16 Half a load was to be delivered that night and
17 Giordano would come up with \$25,000 cash in ad-
18 vance.

19 And during that conversation in the bar, with
20 Detective Giordano, there comes a time when Boyle
21 gets up and goes over and talks to Bill Joyce and
22 Detective Giordano testified, Page 702, "We were
23 in the bar. He left and spoke to Joyce. He came
24 back to me and he said, 'It's okay. I spoke to
25 the kid and it's okay.'"

Summation - Kimelman

Now, when defense counsel suggest to you another reason why Mr. Joyce was in the bar that afternoon, keep that conversation in mind.

We know that later in the afternoon Mr. Joyce -- rather, sometime that afternoon, Mr. Joyce tells Mr. Boyle that he needed a driver, he needed a truck for that night to move the watches,

Mr. Boyle decides to call his friend James Grimsley, a guy that he knew from -- as a regular patron of his bar for years, a friend, someone he considered a friend.

He called him to give him the opportunity to make a fast few bucks and Mr. Boyle testified when he calls Grimsley, he had the following conversation with him and I quote from Page 599 of the record:

"I called up Jim Grimsley. I asked him if he was interested in moving some watches from Valley Street into Brooklyn. It would only take him a couple of hours. I told him he would be well paid for it, which the figure was \$250.

"He asked me if the watches were stolen. I told him they were stolen, but I told him there

[1322]

Summation - Kimelman

wasn't too much danger of him getting into trouble with them"

On cross-examination of Mr. Boyle, Mr. O'Brien asked him --

MR. O'BRIEN: Can I have a page please?

MR. KIMELMAN: Page 634:

"Question: What you really needed was a truck and somebody to drive that truck; is that so?

"Answer: (By Mr. Boyle) That's correct.

"Q: If somebody was going to be involved in some illegal activity, isn't it a fact that they would want more money than they would if they were doing a legitimate activity?

"Answer: (By Mr. Boyle) That is possible."

I suggest to you that makes sense.

"Question: It would have been cheaper to hire Mr. Grimsley if you did not tell him he was involved in stolen watches?

"Answer: (By Mr. Boyle) I wouldn't do that to him. I know Mr. Grimsley for four years.

"Question: How well do you know Mr. Grimsley?

"Answer: Fairly well. As well as you get to know somebody working with them five days a week for four or five years."

Summation - Kimelman

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2 And I suggest to you, ladies and gentlemen,
3 you examine Mr. Boyle on that stand. For whatever
4 else Mr. Boyle is -- he's an admitted participant
5 in this case, he's pled guilty -- for whatever else
6 he is, ask yourselves if you cannot believe that
7 that is the way that this man thinks.
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MP fols9

(Continued on next page.)

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Summation-Kimelman

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MR. KIMELMAN: (continuing) That if he were going to get Mr. Grimsley, his friend, involved in something illegal he would tell him. He would let him know beforehand exactly what it was about.

I suggest to you that this man's personality, as you saw it exhibited for a short time that you did, confirms that. He wasn't getting somebody into trouble if he couldn't help it. He would do everything he could to make sure Mr. Grimsley knew exactly what he was getting into. He offered Mr. Grimsley a chance to make \$250 for a few hours work. I suggest to you that by anybody's standards that is good money and darn good money for a few hours work. I suggest to you that is exactly what happened.

In Mr. Grimsley's case, again whatever his background was before this happened, whatever his inclination was before this case arose -- and nobody is going to question, before this, Mr. Grimsley's or anybody else's reputation here for truthfulness or for good character or was he a good provider or anything else -- but I suggest to you that this is the case of human greed. A case of human greed and breaking the law. A case of trying to make a few bucks, a few quick bucks. And a lot of dollars without

2 worrying about the consequence, without worrying that
3 they were breaking the law.

4 What happens next is confirmed by Mr. Boyle
5 and Mr. Burns and Mr. Grimsley. A meeting at
6 Rasputin's on the evening of March 27th. Bill Joyce
7 is there. And ask yourselves, even if you forget
8 everything else in this case about Bill Joyce, and
9 the first thing you heard about Bill Joyce is he was
10 in Feriucci's on March 27th, and nothing else about
11 him in this case, what was he doing in Rasputin's
12 that night on March 27th? We know that during this
13 time Bill Joyce gives this gun (indicating) to Tommy
14 Burns because Tommy Burns is to go with the driver,
15 Mr. Grimsley, and we know that Burns and Joyce didn't
16 know Mr. Grimsley, didn't know anything about him.
17 Joyce gives Burns that gun for protection. Protection
18 of the \$700,000 worth of watches. Burns takes the
19 gun.

20 We know there are a few stops. And that finally
21 everyone ends up in the body shop in Brooklyn.

22 And unbeknownst to them it is a set up and
23 the place is surrounded by and filled with detectives
24 and FBI men.

25 And Mr. Grimsley drives the truck there with

3 1
2 Mr. Burns. They start unloading the watches. Mr.
3 Boyle gets the two envelopes with the \$20,000 in one
4 envelope and \$5,000 in the other.

5 Joyce comes into the garage and he sees the
6 envelope and the unloading proceeds and the arrests
7 are made and the watches recovered.

8 As a result of information provided by Mr.
9 Grimsley and Mr. Burns, a search warrant is obtained.
10 The next day agents go to Mr. Nitti with the search
11 warrant and find the rest of the watches; plastic
12 bags with the wrapping paper; and the binding.

13 Now, Mr. Grimsley was arrested. Joyce was
14 arrested. Burns was arrested. The FBI gets statements
15 from Grimsley. The FBI gets a statement from Burns.
16 They start to get other people's names. They start
17 to question other people. Areiter gets questioned.
18 Schoenly gets questioned. Nitti gets questioned.
19 And Areiter and Schoenly at first lie to the FBI.
20 Not only about their involvement but the involvement
21 of the others and those two men got on the stand and
22 they explained to you exactly why they lied to the
23 FBI the first time. Not only were they scared, they
24 didn't know what the FBI knew. They knew that Joyce
25 and Burns were with the goods but not anything else.

1
2 I suggest to you these men openly admitted to
3 you they lied. They told you why they lied. Nobody
4 hedged on the stand about lying. They told you and
5 explained to you the reasons why they lied and
6 explained to you that after they got advice from
7 lawyers, after they found out that Tommy Burns was
8 cooperating, and everything had been spilled anyway,
9 on their own -- it's not questioned by anyone that
10 they did it voluntarily on their own decisions --
11 they each went back to the FBI and told the whole
12 story. They each decided to cooperate. They each
13 repeated their stories in the Grand Jury. Each
14 repeated their story to you ladies and gentlemen.

15 I suggest to you their stories have been
16 corroborated up and down by other witnesses, by these
17 exhibits, by your own common sense understanding of
18 what was going on.

19 We know that it wasn't enough for Mr. Joyce
20 and Mr. Walsh at that time. When Pete Areiter --
21 excuse me, when Bob Schoenly got a subpoena to testify
22 before the Grand Jury, and he was approached by Joyce,
23 by Walsh, by Janet Terri, and told by Joyce in the
24 presence of those two other individuals, plead the
25 Fifth Amendment before the Grand Jury, and told by

those individuals -- excuse me, by Joyce in the presence of those two individuals, that if nobody talked the Government can't prove anything.

THE COURT: Just about an hour.

MR. KIMELMAN: I would expect maybe ten more minutes.

THE COURT: Yes, you may finish in ten minutes.

MR. KIMELMAN: Thank you.

For once, ladies and gentlemen, Mr. Joyce and Mr. Walsh and Miss Terri were right. Because that is the reason why they are sitting across from you today. Because Mr. Schoenly admitted what he did, and Mr. Areiter admitted what he did, and Mr. Nitti admitted what he did, and Mr. Boyle admitted what he did. And I suggest to you, contrary to his testimony, Mr. Grimsley admitted what he did.

We know that Pete Areiter was also approached. The day after the arrest Donny Walsh came up to him and said: Billie and Tommy got arrested with the watches, keep your mouth shut.

I will tell you ladies and gentlemen, thank goodness he didn't heed that advice.

You have to evaluate the credibility of these men. I told you at the beginning of the case it's not

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2 that difficult a task. You don't have to take the
3 word of one man as to what happened in this case,
4 you have no less than five accomplices testifying,
5 plus Mr. Bovell, plus Mr. Grimsley, to tell you what
6 was happening. There is obviously not much contradic-
7 tion about it.

8 Are you going to believe that this is --
9 strike that.

10 Now, you have to look at the very important
11 question of Mr. Grimsley's knowledge, and Mr. Bovell's
12 knowledge, because both of those individuals took the
13 stand. Both of those individuals told you what they
14 did. And the only disagreement as to whether they
15 knew they were dealing in stolen material at the time --
16 and the Court will instruct you all, you have to find
17 is they knew they were dealing with material that was
18 stolen, and that is all, that is as to knowledge, and
19 they don't have to know it is from interstate or
20 foreign shipments, all they have to know is they were
21 handling material that was stolen.

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Kimelman-summation

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MR. KIMELMAN: Let's first look at

Mr. Grimsley's testimony. Mr. Grimsley gets a phone call from Mr. Boyle. Mr. Grimsley who said that he had been working straight and this was Thursday, at least Monday through Friday, and probably the previous Saturday, from 8:00 to 6:00 on a plumbing job -- and he had to go to work the next morning to finish the job, and get up at 7:00 in the morning, he gets home, he's only home a few minutes when he receives a call. Boyle says to him, according to his words, if you want to make a few dollars -- well, you picture yourself as Mr. Grimsley for a moment. You have just gotten home. You haven't washed. You haven't eaten. An acquaintance of yours calls up and asks: You want to move some cartons for a few dollars. What is the first thing you are going to ask him? Where are you moving? Where are you moving to? How long is it going to take? And depending on the relationship, whether you are going to be doing it as friendship or for money.

You know darn well if you are going to do it for money and he says a few dollars, and you've

2 come home at night and you're tired and you
3 haven't washed, and you've got to get up at
4 7:00 the next morning, and if somebody offers
5 you to do some work for a few hours, under
6 those circumstances you are going to ask how much
7 and what does it involve.

8 Mr. Grimsley wants you to believe that he
9 didn't ask. Presumably he leaves the dinner on
10 the table and runs right out of the house
11 without asking any other questions. He drives
12 for forty-five minutes so he can get to Rasputin's.
13 When he gets to Rasputin's he would have you
14 believe he still doesn't ask any questions. He
15 meets two guys he doesn't know and they are
16 involved in this and he still doesn't ask any
17 questions -- not one single question.

18 I suggest to you, all along, the reason
19 he is not asking questions is because he already
20 knows. If he didn't know, if Boyle hadn't told
21 him, then he would have asked questions. Just as
22 if any one of you would have asked questions under
23 the circumstances. And even if we can believe
24 Mr. Grimsley, that he didn't ask questions at
25 that point in time, when he gets over to Nitti's

2 garage with a guy he's never been with before
3 and opens up the garage and sees that garage is
4 filled with all these boxes, can any one of you
5 sit there and say that number one, you wouldn't
6 ask what is in the boxes? And even more
7 unbelievably that you wouldn't be curious as to
8 what was inside those boxes.

9 I suggest to you that it just can't be.
10 That it just doesn't happen. Someone asks you
11 to move something, forgetting anything else,
12 whether you are just doing it out of friendship --
13 and you go there and you are going to move it --
14 you know as well as I do that you are going to
15 ask or you are going to find out -- even more
16 basically -- you are going to wonder what is in
17 those boxes.

18 He makes several stops and still,
19 according to Mr. Grimsley's version, he hasn't
20 wondered a bit yet. He doesn't know if he's
21 going to get paid, but he just keeps driving.

22 Finally, it's 10:00 o'clock at night and
23 he's been lost for an hour in Brooklyn. He
24 drives around with his truck with all the boxes
25 and sees Boyle talking on the street corner at

10:00 o'clock at night with another guy driving a Cadillac. And he is supposed to bring all these goods to a body shop at 10:00 o'clock at night in an area he doesn't know.

Can you believe Mr. Grimsley, ladies and gentlemen, still not asking questions, still not wondering what it is all about, still has no idea what is in the boxes, still doesn't know what he is going to get paid and just blindly goes along? I suggest to you that Mr. Grimsley -- you saw him on the stand, you heard about him from the character witnesses -- Mr. Grimsley is a smart enough man to know where he is going, to know exactly what he is getting into, exactly what it's about.

I want you, in this connection, with respect to Mr. Bovell, to listen very carefully to the instructions of Judge Platt, and you listen to Judge Platt's instructions on recent possession of stolen goods and how that affects a man's knowledge. You listen very carefully to Judge Platt's instructions on conscious avoidance, on a man shutting his eyes to what reality dictates, shutting his eyes to what is going on

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around him.

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Listen very carefully to what the law says about that.

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Finally, even if we accept everything that Mr. Grimsley testifies to, even if you accept that Mr. Boyle got on the stand and for God knows what motive lied about this man's participation, Mr. Boyle tells you he doesn't want to get anybody in trouble, he could have easily said on the stand he didn't tell Mr. Grimsley and he didn't know what he was getting into. But that is not the way it happened. Even if you accept Mr. Grimsley's version, even if you think Boyle lied about it, how do you explain Agent Van Nostrand? He is a trained agent. He testified that he interviewed Mr. Grimsley that night. It's part of his job to find out whether Mr. Grimsley knew whether the goods were stolen. It's part of his job to find out whether the man was admitting his guilt or not. Agent Van Nostrand testified uncategorically this man told him he knew it was stolen. The man was caught with the goods, admitted his guilt. This man told him the night that it happened that he knew from the

2 circumstances that something was going on,
3 something wasn't right.

4 Mr. Grimsley said "No, no, the agent
5 misunderstood." He told him that "I found out
6 it was stolen at the end when I was in the
7 garage because I saw this undercover agent open
8 up the box and saw the watches."

9 How can you explain Mr. Grimsley stating
10 to Agent Van Nostrand last March that he didn't
11 know what the commodity was, or knew that it
12 was stolen? It just doesn't balance.

13 Mr. Grimsley's answer is Agent Van Nostrand
14 is lying, and I never said that --

15 MR. O'BRIEN: I object to that last part.

16 THE COURT: Yes. The jury will recall
17 whatever the answer was. I don't think that
18 that was the answer.

19 (Continued next page.)
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1 MR. KIMELMAN (Continuing): You ask yourselves,
2 if that agent is going to get on the stand and risk
3 his job to lie about that statement. The way it
4 really happened is that James Grimsley made a full
5 confession and now he is trying to deny it.
6

7 Finally, we come to Mr. Bovell. Mr. Bovell's
8 testimony is fresh in your mind, it just occurred
9 this morning. Mr. Bovell said he was doing a favor
10 for Donny Walsh. And he was going to get a few
11 dollars for it.

12 MR. SPERLING: Your Honor, he didn't say that.

13 THE COURT: The jury will recall what he said.

14 MR. KIMELMAN: Mr. Sperling is absolutely
15 right. He didn't say that. What he was told by
16 Mr. Walsh was "He would be taken care of."

17 We have heard those words before, ladies and
18 gentlemen, in this trial, because at page 298 of the
19 record, Pete Areiter testified as to a conversation
20 he had with Bill Joyce. He testified:

21 "Question: What was the conversation you had
22 with Bill Joyce the next day?

23 "Answer: That I would be taken care of for
24 removing the boxes.

25 "Question: Did he indicate to you how he was

1
2 going to take care of you for moving the boxes?

3 "Answer: He was going to pay me.

4 "Question: Did he indicate how much?

5 "Answer: About \$3,000."

6 How is Mr. Burns going to be taken care of?

7 A wedding for three or four thousand dollars.

8 Did we hear those words anywhere else?

9 Page 368 of the record -- excuse me. Mr. Areiter
10 explained this further on cross-examination.

11 "When somebody told you you would be taken care
12 of, did you have any questions as to what extent you
13 would be taken care of?

14 "Answer: Yes."

15 I suggest to you, ladies and gentlemen, when
16 somebody tells you they are going to take care of you
17 under these circumstances you want to know how you
18 are going to be taken care of.

19 And that Mr. Bovell's story, that he didn't
20 care or he never asked, does not make sense.

21 Mr. Boyle also testified in his conversation
22 with Bill Joyce the same words were used, he was
23 going to be taken care of.

24 Mr. Bovell is an experienced truckdriver,
25 eighteen years a truckdriver. He's moved household

1 goods, commercial goods. Mr. Bovell, I suggest to
2 you, knows when he goes to a garage at night, and he
3 sees 117 boxes, he moves those boxes for a half-hour
4 or forty-five minutes in the garage, and unloads the
5 boxes on somebody's porch and takes the boxes again
6 and puts them in somebody's basement, in all that time
7 Mr. Bovell -- or according to his testimony -- didn't
8 have his glasses on that night, but never saw, never
9 noticed this label (indicating). Or this label
10 (indicating).
11

12 I suggest to you that you might believe that
13 if it was two or three boxes or if it was a job that
14 took two or three minutes. Can you honestly believe
15 this man handled 117 boxes three times in the space
16 of several hours and not once, not one single time,
17 noticed what it says on the boxes?

18 Can you believe you can handle any of these
19 boxes and no time you would have a look at what was
20 written on the boxes?

21 I suggest it's just not believable. Mr. Bovell
22 can't admit to you that he saw those labels because
23 if he admits he saw those labels --

24 MR. SPERLING: Again, Mr. Bovell's testimony
25 was he saw something that looked like labels but he

1 didn't read them.

2 THE COURT: Finish it up. Don't interrupt.

3 MR. KIMELMAN: He saw those labels and he
4 couldn't deny he was dealing with stolen material
5 because it would all come home to you.

6 I suggest to you that Mr. Bovell knew as soon
7 as he saw those boxes -- if he didn't know before
8 exactly what was going on, by Friday, four days later,
9 there wasn't anybody that didn't know about these
10 watches -- and when he sees the same boxes coming out
11 without wrapping paper, putting them into a rental
12 truck, he knew exactly what he was doing and he was
13 doing it because he was going to be taken care of
14 as well.

15 Ladies and gentlemen, listen carefully to my
16 colleagues of the defense. See if they convince you
17 what was testified didn't happen. See if they give
18 you the explanation that you deserve. And keep an
19 open mind until I get the opportunity -- and try to
20 stay awake -- until I get the opportunity to answer
21 on final rebuttal.

22 Thank you.

23 MR. KAPLAN: May I inquire when you intend to
24 take a break?
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THE COURT: After Mr. Sperling sums up.

MR. KAPLAN: And after that?

THE COURT: Then I have the rest of the defense, depending on the hour. I hope what we finish by 6:15.

(continued next page)

[1340]

B:BD 4pm

1 MR. SPERLING: May it please the Court, my
2 colleagues of the defense, Mr. Kimelman, Mr. Foreman,
3 ladies and gentlemen of the jury:

4 If you recall when I made my opening I said
5 that the Government would not be able to prove that
6 Mr. Bovell knew what the contents of the boxes were,
7 nor did he know that the boxes which he was muscling
8 around were stolen. And I am going to stick by that.
9 That's but one element of the crime.

10 Judge Platt is going to instruct you, he will
11 instruct you on all the elements of the crime of
12 possession and of the crime of conspiracy.

13 Now, who testified against Mr. Bovell, or for
14 the Government, about Mr. Bovell's activities?
15 Mr. Schoenly, Mr. Areiter and Mr. Burns. And, of
16 course, that was on behalf of the Government. And
17 then my client took the stand. And he talked about
18 himself and what he did.

19 Now, the Government would have you believe --
20 and they are basing their -- a good part of their
21 case on the testimony of these three men. And
22 Mr. Kimelman is for these great suggestions. The
23 suggestion is this. But he doesn't suggest to you
24 that you believe that Schoenly, Areiter and Burns
25 testified that as far as they knew, Mr. Bovell knew

[1341]

Sperling - Summation

nothing about the contents of these boxes. And they said it real well and real loud.

Are we going to throw that out and keep the rest of their testimony? Is this a one-way street? Just as justice is not a one-way street.

What else did they say about Mr. Bovell while they were loading and unloading? They said that there wasn't much conversation. But that at no time -- at no time was anything said about anything stolen.

Now, strangely enough, all of these three gentlemen -- are they telling the truth then? Are they telling the truth when they said that that time they didn't know?

Well, if they are telling the truth then, they are telling you -- about my client, they are telling you that he didn't know. They are telling you that they never said anything to him about it.

And I suggest to you, as far as that is concerned, they are telling you the truth.

Now, as far as these three men are concerned, there is this little matter of payment. Is there any word here about Mr. Bovell getting \$3,000 or \$2,000 or \$1,000?

Mr. Bovell took the stand. He told you he

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Sperling - Summation

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expected to get paid. He told you that he had moved household furniture for Mr. Walsh before; that he had gotten paid.

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Is that so unusual?

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Mr. Kimelman talked to you about a quick buck, a fast buck. I suggest to you that muscling one hundred cartons or something like that is not a quick buck. It is a hard buck.

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Now, as far as these three gentlemen were concerned, I think you just heard it, they were all questioned, and then they are questioned again and they are all changing their -- they certainly saw the light. Suddenly they are going to be honest Joe Blow. And maybe they were as far as they are concerned.

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Mr. Bovell was questioned. Mr. Bovell was questioned by the FBI. I have it in -- I have in front of me a copy of the report on that question. There were a few inaccuracies.

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Mr. Bovell gets a call. His office informs him that the FBI would like to see him. From work he goes to the FBI. He's questioned. They inform him of his rights.

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Does he say he wants a lawyer? No.

And why?

Sperling - Summation

I suggest to you that that's the act of an honest man, a man who isn't afraid to tell the truth.

But this case is not going to be decided on suggestions, before I forget it. This case is going to be decided by you people from what you heard on that witness stand and what was presented here. And what was presented here was a scenario, as far as my client is concerned.

I suggest to you this, and I suggest to you that. But what facts came out? Did anybody testify that Mr. Bovell knew, that Mr. Bovell got any money? No. Because it didn't happen.

Mr. Bovell makes a statement. And he answered all the questions. The report is prepared. And there is -- well, some of the things, he says he didn't say exactly that way, that it happened that way. But he does say that he was asked whether or not he knew anything about stolen watches, whether he possessed stolen watches, whether they knew anything about a stolen shipment. And he says, "I told them I didn't know."

Had nothing to do with any such thing.

He reads his report. There's no such mention of any questions.

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Sperling- Summation

Now, I suggest to you now that you may think about that. Where did this report come out? Did Mr. Kimelman bring this report? I brought this report into this case or the contents of this report.

MR. KIMELMAN: Your Honor, I am going to object. The contents of the report are not in evidence.

THE COURT: Yes.

MR. SPERLING: Your Honor --

THE COURT: The report is not in evidence.

MR. SPERLING: Well, your Honor, I will offer it now.

THE COURT: You may not offer it now.

MR. SPERLING: All right.

THE COURT: You know better than that.

MR. SPERLING: I know a lot of things including suggestions.

Did anybody get up on this stand and tell you that Mr. Bovell was offered the chance to change -- to change what he told the FBI agents when he was questioned? I didn't hear that.

You heard Mr. Van Nostrand. You heard what he said about as an experienced -- and he's all that -- agent; that in a situation and investigation such as this, such questions must be asked and such questions

Sperling - Summation

are answered.

Mr. Bovell read this over. The questions aren't in there and the answers aren't in there either.

Now, it's obvious why. Wouldn't help the Government's case, would it? I should say not.

Now, Mr. Bovell took the stand. You all saw and heard what he said. You all saw how he said it. You all saw his demeanor on the stand.

Mr. Bovell is a hard-working man. He's worked all his life since he's a kid. And I suggest to you that such an individual does not just chuck it away on a fast buck. Such an individual is not a greedy criminal. Such an individual is an honest man. Such an individual, you ask him a question, and he gives you an answer.

Now, Mr. Kimelman would have you believe that Mr. Bovell had to know what was going on because he had to read these -- the containers. Now, Mr. Bovell and Mr. Schoenly and Mr. Areiter and Mr. Burns all testified the same way about these containers and what they contain, or, rather, what you -- how they were wrapped.

Now, a man is hefting -- and Mr. Kimelman, he did a lot of hefting. I hope that didn't hurt him.

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Sperling - Summation

MR. KAPLAN: Easy, easy.

MR. SPERLING: Now, look, I can heft a little, too. I'm not that young that I can throw these around. However, I am in a hurry. I want to get back to my wife and have dinner. Am I going to stop and read these things? I am not.

(continued next page)

1 MR. SPERLING (Continuing) Mr. Bovell impressed
2 you as an honest man, a person who didn't evade, who
3 didn't admit. He got on the stand. He told you --
4 he told you about what he did.
5

6 The Government wants you to believe that he had
7 possession. Mr. Bovell couldn't do anything with these
8 cartons except what he was asked to do.

9 The Government would suggest to you that
10 Mr. Bovell has X-ray eyes. I don't make such a
11 suggestion because he doesn't have them. Nobody has
12 them. Wait a minute. Wait a minute. There is that
13 television show called the Bionic Man or the Bionic
14 Woman. They have X-ray eyes. But we are not dealing
15 in television shows or scenarios. We are dealing with
16 facts. And it's on the facts that you have to judge it.

17 Now, ladies and gentlemen, I don't have the
18 advantage of coming back to you again. I know that
19 you will seriously consider the evidence in this case.
20 I am asking you and Mr. Kimelman asked you to use your
21 common sense. Well, use that common sense. Use
22 that common sense when you judge whether or not
23 Mr. Bovell ever had possession of these cartons. Use
24 your common sense as to whether there was any
25 testimony introduced here that Mr. Bovell agreed to

1 enter into any kind of a deal; that Mr. Bovell agreed
2 to deal or to transfer stolen property of any kind.
3 Use your common sense to see whether any evidence was
4 introduced here which would show any intent on
5 Mr. Bovell's part.
6

7 Mr. Bovell is a decent, hard-working man. He
8 has friends and he is a friendly person. Yes, he
9 frequented the Tic Toc Bar and he met these people.
10 He met a lot of other people, too.

11 I suggest to you that Mr. Kimelman didn't
12 bring any other people in here -

13 MR. KIMELMAN: Objection, your Honor.

14 MR. SPERLING: (Continuing) -- who went to the
15 Tic Toc Bar.

16 THE COURT: Yes, sustained.

17 MR. SPERLING: Well, he can make suggestions.
18 Why can't I?

19 THE COURT: That's not the point, Mr. Sperling.

20 MR. SPERLING: Yeah.

21 THE COURT: Are you going to be much longer.

22 MR. SPERLING: No, not at all.

23 THE COURT: Good.

24 MR. SPERLING: Your Honor --

25 THE COURT: Proceed.

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MR. SPERLING: I object.

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THE COURT: Proceed.

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MR. SPERLING: I really don't object. You didn't mean it, anyway.

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Ladies and gentlemen, that's the way I am. I can't change. You heard me ask some rather innocuous questions when I got through like, did you feed the fish. That's the way I am. That's the way I talk. That's the way I feel.

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And when Mr. Bovell took that stand, he told you in more than words how he feels about honesty, how he feels about stolen shipments, how he feels about how he would deal with such things.

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I'm not looking for sympathy here. I am looking for justice. And you will do just that, to hit a pun.

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And I believe that when you examine everything you will find Louis Bovell innocent.

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I thank you very much, ladies and gentlemen.

THE COURT: Now, ladies and gentlemen, we will take that five-minute recess I promised you. I will ask the Clerk to give you a pad of paper in case any of you want to write messages to be conveyed home. I hope that we will be out of here by 6:15 to 6:30.

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2 But you'd better make them out that it's somewhat
3 approximate.

4 Don't discuss the case.

5 Don't leave for a moment. Stay here.

6 You may go.

7 (Whereupon, the jury retired from the courtroom.)

8 THE COURT: Gentlemen, Mr. Sperling, that
9 includes you. You are counsel in this case.

10 Gentlemen, I propose to, as I indicated, finish
11 up this evening and start at 9:30 tomorrow morning.
12 So I am going to instruct the Court Stenographer to
13 be here by 9:15 tomorrow morning, and which I will
14 instruct all of you to be here so we can get started
15 promptly and get the case to them no later than 10:15
16 or 10:30 at the latest.

17 MR. O'BRIEN: Will your Honor go over the
18 requests?

19 THE COURT: I will tonight with you.

20 MR. SPERLING: Your Honor, are we going to --
21 are all the summations going to be in today?

22 THE COURT: They are.

23 MR. SPERLING: Thank you.

24 THE COURT: I will be right back.

25 (Recess taken.)

(The following occurred in the absence of the jury.)

THE COURT: All right. Seat the jury.

(Jury present.)

MR. KAPLAN: If your Honor please, gentlemen, Mr. Foreman, ladies and gentlemen of the jury, as I told you at the beginning, this is a trial which involves a lot of conventions. What it is is a lawsuit.

The United States of America has brought a lawsuit against various of its citizens and the United States, when it brought the lawsuit, charged twelve of them in one indictment, listed them all.

It didn't have to do that. The Government could have broken it down differently, could have charged each one individually. It could have brought smaller combinations.

But the result was when the indictment was filed in Court, the Government then said that in this one case it was individually going to pursue its lawsuit against each and every individual defendant.

You're going to be told, and it's really your obligation, to decide as to each individual defendant in this case, as to each count of the indictment, whether or not that defendant, that one defendant, is guilty or innocent of each of those counts.

Kaplan - Summation

Now, because the case involved some conventions and the law is an old business, once the case got here the lawyers are required to do certain things.

Now, you may notice that we're required to sit at the table in a certain sequence. The sequence is the order in which each individual defendant is indicted.

When we talked to you while the trial was going on, we went in sequence this (indicating) way. Now when we sum up, we are going in reverse.

That's one of the conventions of the lawsuit.

Now, another of the many conventions of the lawsuit is that since the Government has elected to sue some of its citizens, the law imposes on it an obligation to prove their guilt by evidence.

Now, not all of us think of evidence in the same way. There are a lot of us who think that our Government wouldn't indict somebody unless she was guilty. Where there is smoke there is fire. Our FBI wouldn't arrest somebody who didn't commit a crime. If not this crime, some other crime.

Nobody would be sitting in this courtroom responding to this lawsuit unless she did something. So if she isn't guilty of this, she must be guilty of

1 something else.

2 If any of you believe that way, then there is
3 not much point in talking about evidence.

4 Now, there are other things that the
5 conventions of the trial require. You can't substitute
6 oratory for evidence. The winner here isn't the guy
7 who makes the best speech. He doesn't get a gold
8 medal. He doesn't get elected to be the captain of
9 the college debating team.

10 You can't substitute in place of evidence a
11 slovenly and inaccurate use of the English language.
12 That's not evidence.

13 Those are some of the things I want to talk
14 to you about. I only represent the one defendant,
15 Janet Terri. The fact is I've told you that I'm
16 required to sit there by the direction of the Court
17 in a certain chair and get up and talk in a certain
18 sequence doesn't mean that Janet Terri has any
19 connection with anybody else in this lawsuit. She
20 is herself one of the people in this five-sided
21 affair that the Government has chosen to put on, who
22 herself individually has come to Court to meet these
23 -- the lawsuit that the Government has brought against
24 her.
25

1
2 Now, what is it that she is supposed to have
3 done or done in this lawsuit? One of the things that
4 went on here is that every defendant, all twelve of
5 them, were charged with exactly the same thing, all
6 twelve. They were charged with having possession of
7 stolen property and conspiring to have possession of
8 stolen property.

9 Of course the Government gets many advantages
10 from charging a lot of people with the same crimes,
11 and like everything else, there are some disadvantages.

12 When Mr. Kimelman has been talking to you
13 about guilt or innocence, one of the things he's saying
14 to you is that every one of these twelve people are
15 just as guilty as everybody else. They all have
16 exactly the same degree of involvement of guilt.
17 There is no distinction.

18 So he's told you that this woman who is on
19 trial here is just as guilty as the thief, whoever it
20 was, who had the cold nerve to drive out of Kennedy
21 Airport in a stolen truck with three-quarters of a
22 million dollars of watches.

23 He's told you that she is just as guilty as
24 Boyle, that clever little gutter rat who was getting
25 \$5,000 for making a couple of telephone calls and

1 selling the contraband.

2 He's telling you that she's just as guilty as
3 Burns, who like Jesse James rode shotgun on the
4 shipment with a loaded revolver.
5

6 That's what he's saying to you, and of course
7 that's one of the disadvantages of his pursuing this
8 type of lawsuit.

9 Now, what does he say happened here, or what
10 does he say that she did? He has tried to convince
11 you right from the beginning that Janet Ferry's
12 house was involved in something, and he's told you
13 this over and over again, from the minute he opened
14 to you until the minute he summed up, Janet Ferry's
15 house, Janet Ferry's basement, Janet Ferry's this,
16 Janet Ferry's that.

17 What's the plain fact? After a lot of tugging
18 and hauling, he conceded to you this morning that
19 she resides in a house which is owned by her parents,
20 that her parents reside in the house, that she
21 resides there in the house with her parents and her
22 three children. He conceded all of that to you.

23 So what he's talking about is Janet Ferry's
24 house and Janet Ferry's basement, I submit to you,
25 is a very deliberately misleading and slovenly

1 application of the English language.

2
3 What he really wants to tell you is that a
4 house in which she resides, which is owned by her
5 parents and is occupied by her parents and herself
6 and her three children was the scene of some boxes
7 being stored. That's really what he wants to tell
8 you when he tells you by shorthand Janet Ferry's
9 house, Janet Ferry's basement.

10 His misuse of the English language is not
11 evidence, and that's all it is. It's a bad misuse
12 of the English language.

13 So he told you that on March 17, 1975 some
14 people brought the boxes to that house in which she
15 resides.

16 Now, he's also told you, after some tugging and
17 hauling, something which he knew for a long time.
18 She wasn't around New York City when that happened.
19 She was a guest at the Jug End Barn in South Egremont,
20 Massachusetts, which is about 130 miles from here.

21 MR. KIMELMAN: Your Honor, can Mr. Kaplan
22 refrain from testifying?

23 THE COURT: You stipulated that she was up
24 there. Whether she was a guest or not is something
25 else again.

MR. KIMELMAN: And how far away it is from New York and what --

THE COURT: There's no testimony as to how far away it is.

MR. KIMELMAN: And what the Government has known for a long time?

MR. KAPLAN: Anything else?

MR. KIMELMAN: I don't know. You just started.

THE COURT: Proceed, Mr. Kaplan.

MR. KAPLAN: I think he conceded that she was a registered guest at the Jug End Barn in South Egremont, Massachusetts, which I think he told you to use your common sense. We all live around here. It's some distance from the environs of Lynbrook, New York. Whether it's a hundred miles or some other distance.

He told you that. She wasn't in Lynbrook on March 17, on that evening, because she was registered as a guest in South Egremont, Mass.

So when he kept telling you about Janet Perry's house, Janet Perry's basement, what he was really trying to tell you was that some people went there and spoke to somebody in the house. Somebody who couldn't be her and he didn't even attempt to prove

that it was her.

As a result of that conversation, they put the boxes in the basement. That's what he's told you.

And sometime, March 18th or thereafter, she came back from Massachusetts because the very next time we hear of her at all is March 21st, in the Tic Toc Bar and we heard about her from Schoenly.

Now I want to talk to you a little about what your function as jurors is here. You hear a lot of talk. You heard a lot from Mr. Kimelman, did he lie, did he tell the truth, why should he lie, why wouldn't he tell the truth.

In the real world, as he talks about it, sometimes you get people, quite frequently, and you learn from experience, they see the same thing, they give you different versions and maybe they're both lying or they're both telling the truth, or sometimes in all honesty they misinterpret or they don't hear or they don't know.

Now I want to tell you something right now. The only testimony at all -- and it's awfully innocuous -- outside of the other bit I'll come to in a minute about what she did in the Tic Toc Bar on March 21 comes from Schoenly. What's that testimony

2 that she told Schoenly or had a conversation with
3 Schoenly about Schoenly renting a truck.

4 I want to tell you right now, I don't think
5 Schoenly is a liar. I don't want to characterize him
6 as a liar.

7 Schoenly is a guy that's got problems. You
8 see, he made a very bad miscalculation. He got himself
9 involved in a little honest larceny.

10 What was he doing wrong? Timex has got plenty
11 of watches, probably insured.

12 MR. KIMELMAN: Your Honor, I'm going to object
13 to that. I don't think it has any point in this
14 trial.

15 THE COURT: Yes. Sustained.

16 There is no such thing as an honest larceny.

17 MR. KAPLAN: Are you objecting to the use of
18 the word "Honest," your Honor?

19 He got himself involved in a larceny. All
20 right? Nobody was getting hurt, really, the way he
21 thinks. Timex has got plenty of watches, the way he
22 thinks. Must be insured. Insurance company's got
23 plenty of money.

24 What's he doing, spreading the wealth around
25 a little bit? Nobody is getting hurt. It's just nice

2 fun.

3 What happens? He finds, all of a sudden, instead
4 of being involved in this present larceny, he's sitting
5 down to drink panther milk with the panthers, and
6 the panthers all have sharp fangs and they have no
7 sense of humor. Treasury agents, FBI men, Port
8 Authority cops, New York City detectives, they're
9 coming in waves, like Chinese infantry. There is no
10 end to them. And they're not kidding around.

11 And now poor Schoenly, for getting himself
12 involved in this present little situation, he finds
13 that he's got a lot of headaches. He's got a lot
14 of people who want to talk to him, and they all come
15 in hard and they're not kidding around.

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MR. KAPLAN (Continuing): Now, Mr. Kimelman has talked to you a lot about the real world, which is an old military expression that originated in Viet Nam. But I feel sorry for Schoenly because, to use the military metaphor, he's a guy who reminds me quite a bit about the poor recruit cowering on the drill field, having his friendly drill sergeant give him some philosophy, such as, "Boy, you'd better give your soul to God because now your tail belongs to me."

And Schoenly finds, all of a sudden, that not only doesn't his soul belong to him, but neither does his tail. He belongs to the FBI. He belongs to the United States Government, and Schoenly is grasping at whatever straw he can grab at and he's grasping frantically.

So he goes in and he talks to the agents and he tells the agents Joyce was the one who told him about renting the truck, tells them that on April 2nd. Between April 2nd and April 4th nothing much happens. Burns has already been arrested. Joyce has already been arrested. The people in that garage have already been arrested.

And he's thinking, and I think all that Schoenly started thinking was that maybe he'd better throw a couple of more chips onto the table. Maybe

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2 the people who own him body and soul will look a
3 little more kindly on him.

4 And now he goes in and he revises his story
5 again, and after he revises his story again he then,
6 some time in June, comes and he testifies before the
7 grand jury and he says to the grand jury Joyce told
8 me to cop the Fifth, in substance.

9 When he told me to cop the Fifth, two other
10 people were there.

11 Now, I honestly don't know what it proves,
12 except that Joyce was dispensing legal advice without
13 a license, which is bad for my business, but he
14 dispensed some legal advice and this is supposed to
15 show that if Terri was there when Joyce was dispensing
16 the legal advice without a license, in June, that
17 Terri must have done something in March, presumably
18 when she was up in South Egremont, Massachusetts.

19 Now, Schoenly has got his problems and he's the
20 guy who just is going with whatever he has to go with
21 and he's hoping -- and when I tell you I feel sorry
22 for him, I feel sorry for him. All he has left to
23 look forward to is being sentenced here, and when
24 Mr. Kimelman tells you he's an honest man with
25 absolutely no incentive to lie, he's got more incentive

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2 to lie than an awful lot of other people in this
3 world, and if whatever he says could get him out of
4 some of this trouble that he's in, I sympathize with
5 him.

6 But I want to ask you, is that a basis to
7 convict her?

8 I'd like to talk to you just briefly for another
9 minute or two because I know you're getting inundated
10 by the oratory, about what your function is here.

11 What happens during this trial? The best
12 thing that can happen to this defendant Janet Perry
13 is that when you come in with a verdict, she walks
14 out that door. That's the best thing that can happen
15 to her.

16 If she walks out of the door, she doesn't get
17 a letter of apology from the United States Government
18 for bringing a lawsuit against her. Mr. Kimelman
19 doesn't have to say I'm sorry. The Judge doesn't have
20 to award her the good conduct medal. Nobody
21 compensates her.

22 All she does is she goes.

23 The purpose of this trial isn't for you to
24 find out whether somebody lied or whether somebody
25 told the truth.

Kaplan-summation

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2 The purpose of this trial is for you to
3 determine whether on all the evidence you are
4 satisfied beyond a reasonable doubt, that this
5 defendant violated the laws that she's charged with
6 violating, not to find that Schoenly lied.

7 Implicit in a verdict of not guilty isn't a
8 finding that somebody lied or somebody told the truth.

9 Implicit in a verdict of not guilty is a
10 finding that you haven't been satisfied, beyond a
11 reasonable doubt, as to the guilt -- as to the guilt
12 of the defendant.

13 Now, as I say, that satisfaction only can come
14 from hard evidence. It can't come from what he talks
15 about as suggestions.

16 He suggests at a time when he has no witness to
17 put her there that she did something or that she
18 didn't do something or maybe she did something, or if
19 she had a chance she would have done it or maybe she
20 did something else and you might as well convict her
21 anyhow.

22 That isn't evidence. That's his speculation
23 and the gap in his proof he fills with his speculation
24 and I ask you to reject it.

25 Now, as I have told you, this is a contest

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Kaplan-summation

1 between the United States of America and some of its
2 citizens. It's not the world's most even contest.
3 Even in this day and age, the United States of
4 America is still a force to be reckoned with. It has
5 resources that its individual citizens don't have.
6

7 MR. KIMELMAN: Your Honor --

8 MR. KAPLAN: And --

9 MR. KIMELMAN: I object to this.

10 THE COURT: I sustain that objection.

11 That's not correct. Both sides have full
12 power to subpoena.

13 MR. KAPLAN: I am not talking about any
14 subpoenas, your Honor.

15 All I am saying is that no defendant sitting
16 here or any defendant sitting anywhere has access to
17 the Federal Bureau of Investigation as an
18 investigatory arm.

19 MR. KIMELMAN: Your Honor--

20 THE COURT: I will still sustain the
21 objection.

22 MR. KAPLAN: All right.

23 THE COURT: You know what I am talking about.
24 If you want me to, I will instruct the jury on
25 it.

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Kaplan-summation

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MR. KAPLAN: I don't want -- I don't want to
press it.

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Thank you.

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MR. O'BRIEN: May it please the Court,
co-counsel, Mr. Kimelman, Mr. Roberts, members of the
jury:

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I'll try to be as brief as possible.

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The sole question you are here to decide, as
far as James Grimsley is concerned, is has the

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(The jury is in the jury box.)

THE COURT: Mr. Kimelman.

MR. KIMELMAN: Thank you.

Ladies and gentlemen, Judge Platt indicated this is the portion of the case called rebuttal where I am allowed to answer the arguments made by the defense counsel in their summations.

I will try not to repeat myself and try to address myself just to those arguments so that we can all go home tonight.

Now, not taking this in any order or putting any particular significance to it, just taking one defendant at a time.

Ladies and gentlemen, if you believe that the only thing involved in this case is Donald Walsh running around with the boys from the Tic Toc, moving boxes, then you can acquit Donald Walsh. Obviously in my mind it's not worth any further comment than that.

Mr. Joyce. Mr. Verdiramo tells you that the witnesses were prepped. That is to create an inference that each of those witnesses were talked to by the United States Attorney, meaning myself. Every witness stated that he did talk to the United States Attorney. Every witness stated how long they talked to the United States Attorney. Every witness stated to you that he

came in, told his story before he went to the Grand Jury, before they took the stand on trial.

Ask yourselves if these witnesses were prepped. And let's take Mr. Verdiramo's argument to the conclusion that he wants to lead you. These witnesses were fed the story by the Government.-- who is represented by myself. Why do they get on the stand and tell inconsistent stories? Why does one witness say that Mr. Joyce was at the bar at 12:00 o'clock -- Mr. Areiter? And why does one witness say that -- Mr. Schoenly -- that Joyce left and didn't come back until after 1:00? And why does Mr. Burns says Mr. Joyce was not in the bar when he came in between 1:30 and 2:30? Why does Giordano say something happened one way and Mr. Boyle said it happened another way?

The reason is, ladies and gentlemen, because the Government takes the witnesses as they find them. The witnesses get on the stand and testify to the best of their recollection. Recollection is a very important thing to consider because there is a big difference between someone recollecting -- two people recollecting the same event differently and deliberately lying. You can see it in this very trial. I might remember testimony one way, Mr. Verdiramo or Mr. Corbett may

3 1
2 remember the testimony another way. Each one of you
3 may remember it a different way. We are all here, we
4 all sat through the same trial and we all remember it
5 differently with slight variations. It's perfectly
6 natural and nothing wrong with it.

7 I suggest to you that when the witness gets on
8 the stand, they testify the way they remember it.
9 The chips falls where they may and no one was coached.
10 No one was told to tell the exact same story so that
11 it all came out pre-packed with a ribbon on it. Each
12 witness told you what they knew. Each witness dealt
13 with certain people at certain times. They told you
14 just what they remembered. They told you how they
15 remembered it.

16 Let's deal with this for a moment. They all
17 refreshed their memories with the statements they gave
18 to the FBI at the time. And they all told you so.
19 I'm suggesting to you that those statements are the
20 best recollection available because they were made
21 while the events were fresh.

22 That is why, ladies and gentlemen, we have
23 things like transcripts because we are not supposed to
24 remember what happened a year from now. But these
25 transcripts are being made as the words are spoken.

1
2 As the reporter takes down my words, I don't have to
3 remember a year from now what I said to you this
4 afternoon, I can go and read the transcript and I can
5 refresh my memory, and then I can come and tell someone
6 this is what I said to a jury back in January of 1976.
7 There is no mystery about it. There is no scheme or
8 conspiracy. It's simply an aid to remembering.

9 Mr. Verdiramo said that the Government witnesses
10 sold their souls. I suggest to you that there is only
11 one person, maybe more than one person, but at least
12 one person, Mr. Joyce, who's sorry that a deal was
13 made in this case because if Mr. Schoenly had followed
14 his advice and pleaded the Fifth Amendment and not
15 talked about it before the Grand Jury, then there
16 wouldn't be any problem in this case.

17 Isn't what you really have in this case individ-
18 uals getting caught, admitting their guilt, willing
19 to take their punishment? Of course. Anybody who gets
20 on that witness stand, they are human beings and they
21 did something wrong, and will consciously or unconsciously
22 try to minimize their own involvement. Naturally.

23 I suggest to you that the Government take
24 witnesses as they find them. I suggest to you that if
25 Mr. Areiter and Mr. Burns get on the stand and they say

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2 when we first went to the garage we didn't know some-
3 thing was wrong, you don't have to accept that as the
4 truth. You don't have to accept that Mr. Areiter and
5 Mr. Burns told the whole truth about every single thing
6 that they did. But you do know that Mr. Areiter and
7 Mr. Burns and Mr. Schoenly and Mr. Nitti and Mr. Boyle
8 did tell the truth about the material things in this
9 case. Because they cooperated, because the defense --
10 because the testimony of the two defendants who testified
11 corroborated.

12 Now, Mr. Verdiramo also says to you that Mr.
13 Nitti -- you either have to believe Mr. Robinson or
14 you believe Mr. Nitti. Well, it's not the case, ladies
15 and gentlemen. Mr. Nitti testified that Mr. Joyce and
16 Mr. Burns came to his garage around 7:00 p.m. on the
17 evening of March 24th. Mr. Robinson testified that he
18 saw Mr. Joyce in the Tic Toc somewhere between 7:00
19 and 9:00 p.m. and Mr. Joyce left to go to the fight
20 and came back.

21 Mr. Burns testified they did leave and go to
22 the fight.

23 Now, this is Mr. Nitti's house in Lynbrook
24 (indicating). It's right here (indicating). A few
25 short blocks away is the Tic Toc. Mr. Robinson who

2 is trying to remember events that he didn't pay
3 attention to, Mr. Robinson who didn't have someone
4 take his statement a year ago, Mr. Robinson who admit-
5 tedly would like to help his friend Mr. Joyce, said
6 he saw Mr. Joyce somewhere in the bar before the fight.
7 I suggest he probably did. What I suggest Mr. Robinson
8 saw as Mr. Joyce in the Tic Toc afterwards. Maybe
9 8:00 o'clock, maybe a quarter to eight. And that
10 presents no inconsistency. And you have to decide
11 whether Mr. Nitti simply made up the story and why Mr.
12 Nitti would do so.

13 I suggest there is no reason why he should.

14 Then, Mr. Verdiramo, who is an experienced
15 defense counsel, gives you what I call the classic
16 missing man theory. The guy who is really responsible
17 for this theft is not on trial, the mystery man. The
18 man who Mr. Boyle was playing the game with in the bar.
19 But at the same time Giordano tells you that at some
20 time during the conversation Boyle goes over to Joyce,
21 comes back to Giordano, and says "Everything is okay,
22 I just checked with the kid."

23 Mr. Verdiramo says to you that Mr. Boyle is the
24 only one who puts Joyce in the garage that night. If
25 you have a doubt about that, ask for the testimony of

1 Detective Giordan You will see Joyce not only went
2 in the garage but Boyle showed him the envelopes.
3

4 If you accept Mr. Verdiramo's statement, as I
5 said before, everything else in this case, all of
6 Joyce's involvement, if he was there in Ferrucci's
7 on union business, as Mr. Verdiramo would like you to
8 believe, and that is the only reason he was there --
9 what was he doing in Rasputin's? What is he doing
10 giving Tommy Burns a gun? What is he doing at Boyle's?
11 DoDrop? And in that auto body shop?

12 Now, Janet Terri. Mr. Kaplan says that the
13 Government would have you believe that everyone in
14 this case is just as guilty as everyone else. Mr.
15 Kaplan is not correct. People obviously in this case
16 did different things and at different degrees of
17 involvement. Obviously Mr. Boyle pleaded guilty and
18 told you the more severe charge than the other individuals
19 The reason is obvious.

20 Nobody is saying Janet Terri did what William
21 Joyce did or Donald Walsh did. Legally, under the
22 law, she is charged in the same counts. If you find
23 she violated the law on the facts then she is guilty.
24 That is different than saying she did as much as
25 everyone else and there is no claim she did.

1 Mr. Kaplan says, she wasn't there when the
2 goods were brought in. Well, there was never a claim
3 she was. No witness testified she was at the house.
4 Somebody let them put the goods in the basement.
5 Somebody let them keep the goods in the basement from
6 Monday to Friday. Somebody went into the basement,
7 took all the wrappers off, and somebody presumably let
8 them in so they can take the boxes out.
9

10 Is Mr. Kaplan suggesting that Mrs. Ferry's
11 children who live there did all this? Is he suggesting
12 that Mr. and Mrs. Ferry, her parents, are the ones who
13 did all this?

14 Isn't it a lot more sensible, and the only
15 answer, that Donny Walsh's girlfriend, Janet Terri --

16 MR. KAPLAN: I object to that. There is no
17 evidence to sustain it.

18 THE COURT: Overruled.
19

20 (Continued next page)
21
22
23
24
25

1
2 MR. KIMELMAN (Continuing) Whatever reason
3 she got involved in it. Whatever time, between
4 March 17th and March 21st, she got involved in it.
5 She did get involved in it. She became a part of it.
6 She helped rent the truck. She called up first to
7 see if it was available. She gave Bob Schoenly some
8 money to pay for the extra deposit. And not only
9 possessed those goods in the basement of her house,
10 but aided and abetted as the indictment charges the
11 possession of those goods outside the house, knowingly
12 -- and there was no doubt she knew -- the watches were
13 stolen.

14 There is no evidence she was promised anything.
15 There is no evidence that Donny Walsh was promised
16 anything or what Bill Joyce was going to get out of it.

17 I suggest to you because there is no evidence
18 as to those individuals means nothing. If you take it
19 in connection with what the people we know were
20 promised, it's not hard to make that next logical
21 step to think that Janet knew what she was going to
22 get was a big share of the --

23 MR. KAPLAN: I object to that. There is
24 nothing --

25 THE COURT: Overruled.

Kimelman-summation (rebuttal)

MR. KIMELMAN: Now we come to Mr. Bovell.

I think the key to Mr. Bovell, the arguments of his lawyer, the only words that Mr. Bovell was promised in the beginning is that he would be taken care of. Not that you will be paid \$150, as he claims Donny Walsh once paid him for helping to move a friend move from one house to another, but "You will be taken care of."

As I indicated to you before, the same words were given to Mr. Areiter and Mr. Boyle. And I suggest to you these words cry out of illegality. When you say to a man, you go to a garage and move boxes with Flying Tiger on them into someone's basement and come back four or five days later and take those boxes out and put them into another truck -- that man never questions what is going on? Never knows what he wants to get paid? "You will be taken care of," bespeaks exactly what was going on here. And that Mr. Bovell at all times, from the moment he first saw the boxes, knew exactly what was going on.

Again, I will ask you to listen carefully to Judge Platt's instructions tomorrow about conscious avoidance, and a duty of an individual not to close his eyes so that he could come on the stand and claim

1
2 "I didn't know," when everything else cries out --
3 yells out. You don't have to have to words "I am
4 stolen" on a box or on 117 boxes of Flying Tiger cargo
5 to know that something is not right.

6 Mr. Bovell gets on the stand. Mr. Bovell
7 makes statements to the FBI and he admitted what he
8 did. Mr. Bovell is not a stupid man. He admitted
9 everything except the one thing -- he knew. I
10 suggest to you that he knew. And as long as he said
11 and as long as he kept on repeating "I didn't know
12 they were stolen," no matter what the circumstances,
13 he couldn't be convicted.

14 I suggest to you, ladies and gentlemen, the
15 laws which you are governed under in this case he
16 can't do that. He had knowledge. He is guilty of
17 the crime in which he is charged.

18 Mr. Grimsley, I suggest to you, has a more
19 serious problem than Mr. Bovell. As Mr. O'Brien
20 outlined, there are three bases for the Government's
21 case against Mr. Grimsley. Mr. Grimsley is, first
22 of all, caught with the goods. Mr. Grimsley, I
23 suggest to you -- and I don't care how it is turned
24 around or what it is called -- made a confession to
25 the FBI the same night. You can speculate as

1
2 Mr. O'Brien would like you to speculate as to why a
3 man gets caught, makes a confession, and changes his
4 mind and wants to go to trial -- why he does that.
5 There are a number of reasons. I don't think it's
6 appropriate to go into it.

7 I suggest to you that Agent Van Nostrand, an
8 experienced agent, was not mistaken. He knew how
9 important it was to see if this man was actually
10 confessing or not confessing. There is no doubt in
11 his mind.

12 I am going to allow Mr. O'Brien's argument --
13 if you accept Mr. O'Brien's argument that there was
14 some confusion about Mr. Grimsley knowing, and at
15 what point he knew, and accept Mr. O'Brien's point
16 that Agent Van Nostrand is lying, how do we come to
17 the point where Agent Van Nostrand in his report
18 says Mr. Grimsley told me he knew the commodity was
19 stolen but he didn't know what it was?
20 Mr. Grimsley tells you, yes, I knew it was watches.
21 Mr. Grimsley said he didn't say that to the agent.
22 Mr. Grimsley got on the stand and he admitted to you:
23 I told the agent that I knew it was stolen but I
24 didn't know the commodity.

25 Obviously, he couldn't tell you the story the

Kimelman-summation (rebuttal)

first time he saw anything was in the garage, so you have to make a decision, is Agent Van Nostrand lying about that? Or is Mr. Grimsley lying about that and trying to get out from a confession he made?

Now we go to Mr. Boyle.

THE COURT: You used up your twenty minutes.

MR. KIMELMAN: This is the last argument, your Honor.

Mr. Boyle did tell him, contrary to Mr. O'Brien's statement, that it was \$250. He told him on page 655 of the record -- and I won't take the time to read it now.

Mr. Grimsley couldn't get on the witness stand and tell you yes, he offered me \$250, because we all know that if Mr. Grimsley was offered \$250 to move some boxes for a few hours' work may raise a question in your mind as to whether he knew something was not quite right. So he couldn't admit to that.

Mr. Boyle -- excuse me, Mr. O'Brien suggested to you that Mr. Boyle would have never called Mr. Grimsley on the phone. Detective Giordano says you don't talk to someone on the telephone about that. Well, what Detective Giordano thinks is not relevant. He is an experienced undercover cop. He was wired

1 and he knows what people say when they speak freely.

2
3 Mr. Boyle had no reason to believe that his
4 phone was tapped at that time. Otherwise, he
5 wouldn't be dealing the way he was dealing so much
6 in the open with the detective.

7 We don't go around assuming every time you get
8 on the phone it's tapped.

9 So I don't -- strike that.

10 I don't think you should have any trouble
11 believing that Mr. Boyle said it on the phone.

12 Mr. O'Brien finally said to you that what
13 makes sense is to tell him it was stolen because he
14 might say no. Well, take one side of the argument.
15 Mr. Boyle really didn't want him to get involved
16 unless he knew what he was doing -- put that aside.
17 Did Mr. Boyle want to take a chance that Mr. Grimsley
18 would go to this garage, see these boxes and say,
19 "What is going on here? What have you got me
20 involved in? What is this all about? And have him
21 back out or do worse, tell somebody about it?

22 What is more logical to believe, Mr. Boyle
23 thinking he was talking to a friend and have a good
24 reason to believe he was talking to a friend, would
25 tell him up front and give him the choice of whether

1
2 or not he wants to get involved.

3 Ladies and gentlemen, in closing, it's very
4 important that the interest of justice be served in
5 this case. Your job is a very limited job. Your
6 job is not to see whether Mr. Joyce goes back to work
7 or not. Your job is not even to see if anybody goes
8 to jail or not because you don't make that decision.

9
10 (continued next page)
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1 [1439]

Kimelman-summation

2 /ss 2
3 10pml

MR. KIMELMAN: (Continuing.) Judge Platt has that tough decision to make. He bases it on a lot of factors.

Your job is very limited. All you have to do is to be the judges of the facts, decide whether something happened or didn't happen. Compare it to the law and make a decision whether somebody broke the law as it is given to you.

I urge you as strongly as I can, don't concern yourselves about anything beyond that. Don't let sympathy, don't let prejudice, don't let emotions get into your deliberations. Do the job that you are sworn to do.

I will let Mr. O'Brien believe in the system and believe that the jury system is the best way of determining guilt or innocence. But your common sense -- it is your intelligence, and you can determine what happened and what didn't happen, and that you have the facts before you, you have the information, you have the evidence before you to make that determination. And I am confident that you will make that determination.

Thank you.

[1440]

2 1 THE COURT: Now, ladies and gentlemen, I
2 think I -- I hate to impose on your time further,
3 but tomorrow morning I am going to ask you to
4 check in at 9:15 downstairs. And we will start
5 here at 9:30 promptly with the charge, or as
6 close to 9:30 as I can get through with the
7 attorneys at that time. And I hope it will be
8 at 9:30. AND I should have the case to you by
9 10:30 at the latest.

10 Don't discuss the case. Have a good
11 evening. We will see you tomorrow morning. 9:15,
12 tomorrow morning, check in.

13 (Whereupon, the jury retired from the
14 Courtroom.)

15 THE COURT: Now, gentlemen, I have been
16 over your requests. I think, though, in the
17 interest of saving time, what I will do is run
18 down just very quickly, because I want to leave
19 almost instantly, and then I will discuss it
20 between 9:15 and 9:30 tomorrow.

21 Taking Mr. Sperling, I will give Number 1,
22 Number 3, Number 5, and essentially the others
23 in other words.

24 Taking Mr. Verdiramo, I am going to give
25 essentially most of his in other words.

3 1 Specifically, I will give Number 7, Number 9,
2 Number 11, 12.

3 Mr. O'Brien. Well, I am going to give
4 them in other words. I didn't mark any of them
5 that I am going to give specifically.

6 The government, I will give Number 1,
7 Number 3, and essentially the others in other
8 words.

9 MR. KAPLAN: I have two requests, your
10 Honor, that are very brief. One I would like --

11 THE COURT: I will not take them verbally.
12 Write them out and hand them to me tomorrow. I
13 will consider them.

14 MR. KAPLAN: Only an addendum to the
15 other one. Two words.

16 MR. O'BRIEN: I would ask you to reconsider
17 on my supplemental request Number 2.

18 THE COURT: I will consider them all
19 tonight.

20 (Whereupon, an adjournment was taken
21 Thursday, January 29th, 1976 at 9:15 o'clock a.m.)
22
23
24
25

[1442]

448a

I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

Louis Bovell

1143 1220

Eileen Barbara Gruber

1227

Joan Cullen

1229

Marie Arenella

1234

Mary Foley

1240 1241

Peter Pellerito

1242 1243

George Van Nostrand

1266 1270 1274 1275

Walter Figurski

1245 1246 1246 1247

Thomas P. Walsh

1248 1258

SUMMATION

Mr. Kimelman

1295

Mr. Sperling

1340

Mr. Kaplan

1352

Mr. O'Brien

1366

[1442a]

449a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D. NY
FEB 11 1976

UNITED STATES OF AMERICA,

-against-

WILLIAM J. JOYCE, DONALD WALSH,
EDWARD J. BOYLE, THOMAS M. BURNS,
JAMES GRIMSLEY, LEONARD NITTI,
JANET TERRI, also known as
Janet Perry, ROBERT SCHOENLY,
PETER AREITER, LOUIS BOVELL,

Defendants.

TIME AM.....
PM.....

75-CR-488

United States Courthouse
Brooklyn, New York
January 29, 1976
9:30 o'clock A.M.

Before:

HONORABLE THOMAS C. PLATT, U.S.D.J.

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

466.

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U.S. Attorney

VINCENT VERDIRAMO, ESQ.
Attorney for Defendant Joyce

JOHN C. CORBETT, ESQ.
Attorney for Defendant Walsh

✓ THOMAS O'BRIEN, ESQ.
Attorney for Defendant Grinsley

WILLIAM H. SPERLING, ESQ.
Attorney for Defendant Bovell

MARSHALL KIPLAN ESQ.
Attorney for Defendant Terri

(The following took place in the absence of the jury.)

THE COURT: I gather, we are still missing one or two people.

No, I guess it's just the parties.
Mr. Verdiramo.

MR. CORBETT: He is here, Judge.

THE COURT: Well, I propose to go ahead anyway because I've got a lot to discuss.

MR. O'BRIEN: He's coming.

THE COURT: We will take the last first.

MR. KAPLAN: That's me.

THE COURT: I suppose it's because of my lack of education in this business, but I never heard of taking judicial notice of the distance between two places unless it may be the distance between the Brooklyn Federal Courthouse and the Southern District Federal Courthouse.

MR. KAPLAN: It is normally proved by reference to an atlas, your Honor. And that's the only way I would know how to prove distance between one city and another. I certainly think that you could take judicial notice of distances.

THE COURT: I don't propose to do so.

1 MR. KAPLAN: It is perfectly all right.
2 Would your Honor mark my request as an exhibit so I
3 can preserve it for the record?

4 THE COURT: It doesn't get marked as an
5 exhibit. It will be part of the file. I won't put
6 this in in its present form.

7 As far as stipulations between counsel, of
8 course, that is a standard charge and that will be
9 charged.

10 MR. KAPLAN: Thank you.

11 THE COURT: Not in those words.

12 Now, the next to the last, which is
13 Mr. Sperling because he's seated over there last.

14 MR. SPERLING: But not least.

15 THE COURT: No. You have never been least,
16 Mr. Sperling.

17 As I told you last night, I will charge them
18 on one. Two, in other words. Three, I will charge.
19 Four, in other words. No. 5, I have reconsidered.
20 I am going to charge -- I am going to give a standard
21 charge on possession. I think that that might
22 be confusing. I am going to give a standard charge
23 on possession. That, I don't think you are going to
24 object to.

25 No. 6, 7 and 8, I think are encompassed in.

1 [1446] It comes within my conspiracy charge.

2 MR. SPERLING: Okay.

3 THE COURT: But they are not in those words.

4 Now, next comes next to last.

✓ 5 I am not going to give one of those words, but
6 I will give it in terms of actual knowledge. Mere
7 suspicion, of course, I will charge that in essence.

8 MR. O'BRIEN: Fine.

9 THE COURT: No. 2 is out. No. 3, I have my own
10 accomplice charge which I think is essentially the
11 same as yours, if that is an exact quote. If that
12 isn't an exact quote, this is the -- this is from
13 Devitt and Blackmoor.

14 MR. O'BRIEN: Yes, it is.

15 THE COURT: No. 4, I have my own Devitt and
16 Blackmoor charge on character evidence.

17 MR. O'BRIEN: Fine.

18 THE COURT: No. 5, I don't think is a correct
19 statement.

20 MR. O'BRIEN: I got that as a direct quote from
21 recent cases -- well, they are not exactly recent.
22 They are from the '72 Supreme Court cases in which
23 they fully considered this whole question about the
24 inference.

25 THE COURT: I understand. I am going to give it.

1 I am going to give a charge. But what troubles me
2 about that is two things: One is that it's really
3 adverse to your client, that I think it imports some
4 burden upon your client to prove something or to
5 prove whether it is satisfactory. And I don't think
6 there is any such burden.

7 MR. O'BRIEN: I am sure there is no such
8 burden.

9 THE COURT: And I am going to give, you know,
10 the satisfactory explanation, but lack of -- if
11 satisfactorily explained, which I think is better for
12 you than this is. But you listen to it and see.

13 MR. O'BRIEN: Yes.

14 THE COURT: But I -- I was troubled by that
15 charge when I read it. If you are not happy, let me
16 know at the end of the charge.

17 MR. O'BRIEN: Yes.

18 THE COURT: Which I am sure you will do.

19 MR. O'BRIEN: Your Honor will say, though, that
20 the burden is on the Government to prove everything.

21 THE COURT: Yes. I think the way you worded it
22 is to carry it -- it seems to carry a burden that a
23 defendant has to give a satisfactory explanation.
24 Now, maybe it's okay in your client's case but there
25 are three clients -- three people here who did not

1 take the stand.

2 MR. SPERLING: Now, your Honor, my client did
3 take the stand.

4 THE COURT: I know. I am fully cognizant of
5 that.

6 MR. SPERLING: I saw Mr. O'Brien's charge.

7 THE COURT: You are joining in his request?

8 MR. SPERLING: Yes.

9 THE COURT: But there are three against two.

10 MR. SPERLING: I am sure your Honor can work
11 around that.

12 THE COURT: By just ignoring it?

13 MR. SPERLING: No. By charging properly.

14 THE COURT: All right.

15 Now, Mr. Verdiramo's request.

16 The only one I reconsidered from what I told
17 him last night -- this is 11.

18 MR. VERDIRAMO: I think last night your Honor
19 said 7, 9, 11 and 12.

20 THE COURT: Yes. But No. 11, I am going to use
21 my own language. I am going to charge a number of
22 witnesses charge. I will give you the 11 charge, but
23 I am going to use my own standard charge rather than
24 yours. I don't think you will find any exception.

25 No. 12, I have amended considerably. I will

1 give it, but I will give it in these terms.

2 Merely because the evidence shows that any of
3 the defendants knew or were acquainted with other
4 parties to this matter is not in and of itself and
5 without more proof of any defendant's guilt of his
6 or her participation in the alleged conspiracy.
7 Each defendant must be judged upon the evidence with
8 respect to him or her, not solely upon whom he or she
9 knew or with whom he or she associated.

10 MR. VERDIRAMO: Okay. Same thing.

11 THE COURT: Not exactly the same.

12 MR. VERDIRAMO: Different words, but the same
13 import.

14 THE COURT: But the way you had it word, it was
15 a little different.

16 MR. VERDIRAMO: You wouldn't expect me to put
17 it other than in my best light.

18 THE COURT: No. I don't blame you for
19 trying.

20 As I indicated, I will give No. 1 of the
21 Government.

22 MR. O'BRIEN: I object to the Government's
23 No. 1. I think that is an incorrect statement the
24 way it is stated there, talking about the rationale
25 beyond the inference, the prima facie evidence of

1 guilt, the controlling weight. I think you're giving
2 much more. It is an inference they can draw, period.
3 It is not anything -- they draw the inference and they
4 can use all the other evidence. But they have to
5 find beyond a reasonable doubt that the defendant knew.

6 MR. KIMELMAN: This is an exact quote from
7 Brawer. That was proved in Brawer.

8 THE COURT: I think it's all right. He's got
9 reasonable doubt in there.

10 Request No. 2, I have modified to fit the facts
11 as they now are.

12 I think it is correct that -- they can't
13 deliberately avoid or conscientiously attempt to avoid --

14 MR. O'BRIEN: I object to that, too.

15 THE COURT: I am sure you do.

16 MR. O'BRIEN: Well, I would -- I mean I think
17 it is well worth it to take my exceptions now rather
18 than after your Honor charges because at that point --

19 THE COURT: I am going to give No. 3, as I
20 have indicated.

21 No. 4, I am going to give my own accomplice
22 testimony.

23 No. 5, both parties at one point or another --
24 or both sides have asked for this request. And I will
25 give it. And I will give it with such amendment as

1 any of you wish to incorporate in it.

2 MR. KAPLAN: I never asked for it.

3 THE COURT: Mr. O'Brien asked for it.

4 MR. KAPLAN: I am not bound by what Mr. O'Brien
5 asked for. I never asked for it. He and I are not
6 partners.

7 MR. O'BRIEN: That's correct.

8 THE COURT: Don't say it with such glee.

9 MR. O'BRIEN: With all due deference to my
10 colleagues, I will withdraw the request for any --

11 MR. KAPLAN: I don't want him to do that, either.
12 All I am saying is I didn't ask for it.

13 THE COURT: I don't think -- even Mr. Verdiramo
14 summed up and he said he thought it was all right.

15 MR. KAPLAN: He's free to sum up any way he
16 wants.

17 THE COURT: All right. You can all object.
18 But I am going to give it in one form or another.

19 Do you have any objection to Mr. Kimelman's
20 wording? Do any of you object?

21 MR. O'BRIEN: I don't think like anything, your
22 Honor, regarding your Honor's opinion --

23 MR. SPERLING: That's right. The last. It is
24 my opinion --

25 MR. CORBETT: Yes.

1 THE COURT: If I take that out, will everybody
2 be happy?

3 MR. O'BRIEN: I have no objection to the
4 wording.

5 MR. SPERLING: I will be very happy.

6 THE COURT: All right.

7 MR. KAPLAN: I would prefer that your Honor put
8 it that the fact that a lawyer prepares a witness
9 does not in and of itself indicate that the witness
10 testified --

11 THE COURT: I just say it's perfectly proper for
12 a lawyer to ask a witness what he knows about the case.

13 MR. VERDIRAMO: If it comes out that it lends
14 any sort of credence to the witness --

15 THE COURT: I am not saying it's perfectly
16 proper for the U.S. Attorney to. This applies to all
17 of you.

18 MR. O'BRIEN: I don't see anything wrong with
19 it.

20 MR. SPERLING: I don't, either.

21 THE COURT: I think you are all trying to find
22 something that doesn't exist. That's always been.
23 I should think Mr. O'Brien would want it because he
24 specifically asked in front of the jury if I would
25 consider giving it. And I said I would consider

1 giving it.

2 MR. O'BRIEN: Your Honor, I have no objection
3 to it.

4 THE COURT: Okay.

5 MR. SPERLING: Your Honor, I am a little late,
6 I guess, but in request No. 2, the last paragraph,
7 I object to that very much.

8 MR. O'BRIEN: Yes. I think it has to be
9 actual knowledge. There are a number of cases in the
10 Second Circuit -- there was one case where they
11 reverse Judge Costantino where he said that the
12 defendant can't look the other way and refuse to
13 obtain knowledge. I cited the case in my request to
14 charge where I have requested actual knowledge. And
15 I feel that that is what that is saying, that this is
16 a civil burden rather than a criminal burden where he
17 shouldn't have known.

18 MR. SPERLING: I think --

19 THE COURT: Conscious avoidance of knowledge,
20 even in the aiding and abetting standard charge, it
21 is nothing unique.

22 MR. KAPLAN: I object to it because it is not
23 tailored to fit all the defendants. There's
24 absolutely no proof that Ferry consciously avoided
25 anything.

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1 THE COURT: That's --

2 MR. VERDIRAMO: There's also no proof that
3 Mr. Joyce had any physical possession of anything.
4 And I object to the charge.

5 MR. O'BRIEN: I think the Court, though, should
6 actually advise the jury that there has to be actual
7 knowledge and shouldn't go any further than that.
8 That is what the law is. And it is my belief that
9 there should be actual knowledge. And when you start
10 watering it down by trying to avoid, you're going into
11 a civil burden of negligence. And negligence is not
12 sufficient to convict.

13 THE COURT: No. I specifically say that
14 negligence is not sufficient.

15 MR. KIMELMAN: Your Honor, all the cases that
16 I handed up to your Honor at the end of the
17 Government's case support this charge. The wording
18 of the charge was from Judge Weinstein Joli. It is
19 his charge and he's been upheld many times.

20 THE COURT: You can't participate in a crime
21 and say that I didn't know what was going on by just
22 deliberately avoiding knowledge. I don't think that
23 that is -- that's unreasonable. That's a very un-
24 reasonable state of affairs. If you could do that,
25 every criminal could do that.

1 MR. O'BRIEN: No. That is not true. If
2 somebody walks in to a bank with a gun, obviously he
3 can't say that he didn't have any knowledge that what
4 he was doing was wrong. But here where you have him
5 handling packages, the question is, did he know that
6 those packages were stolen?

7 MR. SPERLING: That's it.

8 MR. O'BRIEN: If you don't have the actual
9 knowledge, then you don't have the actual knowledge.
10 And I cited United States v. Fields, 466 F. 2d, 169.
11 And U.S. v. --

12 THE COURT: What you are saying in No. 2, you
13 had the equivalent of actual knowledge because you
14 closed your eyes and didn't look at the -- at what you
15 should have looked at under normal circumstances.

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1 MR. O'BRIEN: I think it's terribly confusing
2 to the jury and the jury will not reach the
3 conclusion of actual knowledge.

4 MR. SPERLING: The cases that Mr. Kimelman
5 cited all were peculiar in this instance, that by
6 merely looking at the object itself, a suspicion could
7 be raised. And that's in all of those cases which
8 cite recent possession. Because when you look at a
9 bond, you know it is a bond. And when you're going
10 to sell it for twenty-five cents on the buck, it's
11 a lot different from a package. There's nothing on
12 the package to indicate whether it's stolen.

13 MR. VERDIRAMO: I join in those objections.

14 THE COURT: No. I think as No. 2 is worded it
15 is qualified right at the outset.

16 Actual knowledge that a defendant received and
17 then possessed stolen watches, is an essential element
18 of the offense charged, and is all right.

19 MR. O'BRIEN: I think up to the second
20 paragraph I have no objection to it. It is from the
21 -- it is the third and fourth paragraphs that I
22 seriously object to because it waters down what the
23 actual knowledge and the --

24 THE COURT: No. I think what we are saying is
25 the equivalent.

1 MR. VERDIRAMO: Also what onus does a defendant
2 have? What onus does that have on the defendants
3 who haven't testified?

4 MR. KIMELMAN: No..

5 MR. VERDIRAMO: The jury will say, well, why
6 didn't the others get on the stand.

7 THE COURT: It is not a supposition of a
8 burden on them to testify.

9 MR. VERDIRAMO: But there is going to be some
10 doubt as to why they didn't testify. It is a question
11 that they will have in their minds at the beginning.
12 Why add fuel to the fire? I think 3 and 4 are
13 totally prejudicial.

14 MR. O'BRIEN: I think United States v. Fields,
15 Nitti, United States v. Cangiano are all opposite to
16 that charge. And they are all Second Circuit cases,
17 also.

18 THE COURT: All right. Are they ready? Let's
19 bring them in.

20 (Whereupon, the jury entered the jury box.)

21 THE COURT: Now, ladies and gentlemen of the
22 jury, I am going to give you the instructions on the
23 law in this case. It is my practice to read the
24 instructions to you. I do this principally so that
25

1 the errors will be kept to a minimum.

2 I realize it is more difficult for you to follow
3 in this fashion and requires greater attention on your
4 part. But they are not that hard to follow. If you
5 listen and pay close attention, I think you will
6 understand all of the instructions.

7 If my voice drops at all and you can't hear
8 any portion of it, let me know by raising your hand
9 or making some noise so that the -- I want to make
10 sure you do hear all of the instructions.

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2 Now that you have heard the evidence and the
3 argument, it becomes my duty to give the instructions
4 of the Court as to the law applicable to the case.

5 It is your duty as jurors to follow the law as
6 stated in the instructions of the Court, and to apply
7 the rules of law, so given to the facts as you find
8 them from the evidence in the case.

9 You are not to single out one instruction alone
10 as stating the law, but must consider the instructions
11 as a whole.

12 Neither are you to be concerned with the
13 wisdom of any rule of law stated by the Court.
14 Regardless of any opinion you may have as to what the
15 law ought to be, it would be a violation of your sworn
16 duty to base a verdict upon any other view of the
17 law than that given in the instructions of the Court;
18 just as it would be a violation of your sworn duty,
19 as judges of the facts, to base a verdict upon anything
20 but the evidence in the case.

21 You must not permit yourself to be governed by
22 sympathy, bias, prejudice or any other considerations
23 not founded on evidence and these instructions on the
24 law.

25 Justice through trial by jury must always

1
2 depend upon the willingness of each individual juror
3 to seek the truth as to the facts from the same evidence
4 presented to all the jurors; and to arrive at a verdict
5 by applying the same rules of law as given in the
6 instructions of the Court.

7 You have been chosen and sworn as jurors in
8 this case to try the issues of fact presented by the
9 allegations of the indictment and the denial made by
10 the "not guilty" pleas of the accused. You are to
11 perform this duty without bias or prejudice as to any
12 party. Again, the law does not permit jurors to be
13 governed by sympathy, prejudice, or public opinion.
14 Both the accused and the public expect that you will
15 carefully and impartially consider all the evidence in
16 the case, follow the law as stated by the Court and
17 reach a just verdict regardless of the consequences.

18 Now, I am not going to send the exhibits which
19 have been received in evidence with you as you retire
20 for your deliberations. However, you are entitled to
21 see ^{any} any or all of the exhibits as you consider your
22 verdict. I suggest that you begin your deliberations
23 and then, if it would be helpful to you, you may ask
24 for any or all of the exhibits simply by sending a
25 note to me through one of the deputy marshals who will

1 be stationed outside your jury room door.

2 Now, an indictment is but a form or method of
3 accusing a defendant of a crime. It is not evidence
4 of any kind against the accused.
5

6 The fact that this prosecution is brought in
7 the name of the United States of America does not
8 entitle the Government to any greater consideration
9 than any other litigant would get, but by the same
10 token, it is entitled to no less consideration. The
11 issues in this case must be decided on the evidence
12 and on the law. All parties, Government and individual,
13 stand alike as individuals before the bar of justice.

14 Now, there are two types of evidence from
15 which a jury may properly find a defendant guilty of
16 a crime. One is direct evidence -- such as the
17 testimony of an eyewitness. The other is circum-
18 stantial evidence -- the proof of facts and circum-
19 stances which rationally imply the existence or non-
20 existence of other facts because such other facts
21 usually follow according to the common experience of
22 mankind. Thus, by way of example, the footprint of a
23 man in the sand implied to Robinson Crusoe that there
24 was another man with him on the desert island; and,
25 indeed there was, the man Friday. Thus, on the one
hand, you may have

1 direct evidence of the issues and on the other hand
2 you may have circumstantial evidence of the issue.
3 The law does not hold that one type of evidence is
4 necessarily of better quality than the other. The
5 law requires only that the Government prove its case
6 beyond a reasonable doubt both on the direct and
7 circumstantial evidence. At times, the jury might
8 feel that circumstantial evidence is of better quality.
9 At other times they may feel direct evidence is of
10 better quality. That judgment is left entirely to
11 you.

12 As a general rule, the law makes no distinction
13 between direct and circumstantial evidence, but
14 simply requires that, before convicting a defendant,
15 the jury be satisfied of the defendant's guilt
16 beyond a reasonable doubt from all the evidence in the
17 case.
18

19 Now, the law presumes the defendants to be
20 innocent of crime. Thus, a defendant, although
21 accused, begins the trial with a "clean slate" --
22 with no evidence against him or her. And the law
23 permits nothing but legal evidence presented before
24 the jury to be considered in support of any charge
25 against the accused. So the presumption of innocence

1 alone is sufficient to acquit a defendant, unless the
2 jurors are satisfied beyond a reasonable doubt of the
3 defendant's guilt after careful and impartial
4 consideration of all the evidence in the case.
5

6 The burden is always upon the prosecution to
7 prove guilt beyond a reasonable doubt. This burden
8 never shifts to a defendant; for the law never imposes
9 upon a defendant in a criminal case the burden or duty
10 of calling any witnesses or producing any evidence.

11 Now, a reasonable doubt does not mean a doubt
12 arbitrarily and capriciously asserted by a juror
13 because of his or her reluctance to perform an
14 unpleasant task. It does not mean a doubt arising
15 from the natural sympathy which we all have for others.
16 It is not necessary for the Government to prove the
17 guilt of a defendant beyond all possible doubt.
18 Because if that were the rule, very few people would
19 ever be convicted. It is practically impossible for
20 a person to be absolutely sure and convinced of any
21 controverted fact which, by its nature, is not
22 susceptible of mathematical certainty. In consequence,
23 the law says that a doubt should be a reasonable
24 doubt, not a possible doubt.

25 A reasonable doubt is a doubt based upon

1
2 reason and common sense, the kind of doubt that would
3 make a reasonable person to hesitate to act. Proof
4 beyond a reasonable doubt must therefore be proof of
5 such a convincing character that you would be willing
6 to rely and act upon it unhesitatingly in the most
7 important of your own affairs.

8 The jury will remember that a defendant is
9 never to be convicted on mere suspicion or conjecture.

10 Again, a reasonable doubt means a doubt
11 sufficient to cause a prudent person to hesitate to
12 act in the most important affairs of his or her life.

13 The requirement of proof beyond a reasonable
14 doubt operates on the whole case and not on the
15 separate bits of evidence. Each individual item of
16 evidence need not be proven beyond a reasonable
17 doubt.

18 Now, I am going to take the counts of the
19 indictment in reverse order. In other words, I am
20 going to discuss first with you count 2 of the
21 indictment or the substantive count of possession of
22 goods stolen from foreign commerce, knowing them to
23 have been stolen, and thereafter discuss with you
24 count 1 which is the conspiracy count relating to the
25 same offense. I think it will make it easier for you

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2 to understand the various applicable rules of law
3 applicable to the case if I take them in this reverse
4 order. But bear in mind that I am going to discuss
5 the two counts with you in reverse order beginning
6 with count 2.

7 Now, this is the charge in count 2 of the
8 indictment that on or about and between the 17th day
9 of March, 1975 and the 27th day of March, 1975 both
10 dates being approximate and inclusive, within the
11 Eastern District of New York--

12 Now, there are several names that I am going
13 to read, but remember, you are only concerned now
14 with five. They are the first five. The
15 defendants William J. Joyce, Donald Walsh -- they are
16 not the first five, I am sorry.

17 William J. Joyce, Donald Walsh, you are
18 concerned with those two.

19 Edward J. Boyle, Thomas M. Burns, you are not
20 concerned with them.

21 James Grimsley, you are concerned with.

22 Janet Terri, also known as Janet Perry, you
23 are concerned with.

24 Robert Schoenly, Peter Areiter, you are not
25 concerned with.

2 Louis Bovell, you are concerned with.

3 John Freudiger and Morton Hanan, you are not
4 concerned with.

5 Did willingly and unlawfully receive and have
6 in their possession approximately 117 cartons of
7 Timex watches, having a value of approximately \$830,000,
8 which goods were stolen from Flying Tiger Airlines at
9 John F. Kennedy International Airport, Queens, New
10 York, on March 17, 1975, while moving as a part of a
11 foreign shipment of freight from Taipei, Taiwan to
12 Queens, New York, the defendants William J. Joyce,
13 Donald Walsh, Edward J. Boyle, Thomas M. Burns, Janet
14 Terri, also known as Janet Perry, Robert Schoenly,
15 Peter Areiter, Louis Bovell, John Freudiger and Morton
16 Hanan then knowing said goods to have been stolen.

17 All in violation of Title 18 United States Code
18 Section 659 and Section 2.

19 Now, Section 659 of Title 18 of the United
20 States Code provides in pertinent part as follows:

21 "Whoever embezzles, steals, or unlawfully takes,
22 carries away, or conceals, or by fraud or deception,
23 obtains from any...aircraft, air terminal, airport,
24 aircraft terminal or air navigation facility with
25 intent to convert to his own use any goods or chattels

moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express or other property; or

"Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen..." shall be in violation of the law.

Now, Section 2 of Title 18 of the United States Code, which section is also cited in Count 2 of the indictment, provides that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures the commission, is punishable as a principal.

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Now, the essential elements of the crime charged in count 2 which must be proved beyond a reasonable doubt are as follows:

1. That the accused had the goods or merchandise in his, her or their possession, as the case may be;

2. That such goods or merchandise exceeded in value \$100;

3. That such possession was done knowingly and intentionally;

4. That such goods or merchandise had been embezzled, stolen or unlawfully taken^N or carried away from an aircraft, air terminal, airport, aircraft terminal or air navigational facility while the goods or merchandise were moving as or were a part of or constituted a foreign shipment of freight, express or other property; and

5. That the accused knew such goods or merchandise to have been stolen.

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THE COURT: (Continuing.) It is not necessary that the accused knew that the goods or merchandise had been stolen from an aircraft, air terminal, airport, aircraft terminal or air navigational facility while the goods or merchandise were moving as part of a foreign shipment. It is necessary only that the proof shows that the accused knew that the goods or merchandise had been stolen.

The term "foreign commerce" includes a shipment from a foreign country to this country.

Section 10 of Title 18 of the United States Code, provides that:

"The term 'foreign commerce', as used in this title, includes commerce with a foreign country."

The foreign commerce character of the property stolen is an essential element of this offense. The property must have been moving in or been a part of a shipment from a foreign country at the time of the theft.

The foreign commerce character of the shipment commences when the property is segregated for foreign commerce shipment and comes

2 1 [1470]

Charge

2 into the possession of those who are assisting its
3 course in foreign commerce and continues until the
4 property arrives at its ultimate destination in
5 this country and is there delivered to the person
6 to whom it is shipped.

7 Section 659 of Title 18 of the United States
8 Code provides that:

9 "To establish the ... foreign commerce
10 character of any shipment in any prosecution under
11 this section the waybill or other shipping document
12 of such shipment shall be prima facie evidence of
13 the place from which and to which such shipment
14 was made."

15 "Prima facie evidence" means sufficient
16 evidence, unless outweighed by other evidence in
17 the case. In other words, waybills or bills of
18 lading or other shipping documents such as
19 invoices, if proved, are sufficient to show the
20 foreign commerce character of the shipment in the
21 absence of evidence in the case which leads the
22 jury to a different or contrary conclusion.

23 Again, the evidence in the case need not
24 establish that the accused actually knew the
25 goods or merchandise mentioned in the indictment

Charge

constituted a part of a foreign commerce shipment.

The word "unlawfully" means contrary to law. So to do an act unlawfully means to do willingly something which is contrary to law.

The word "stolen" as used in the crime involved herein includes all wrongful and dishonest takings of property with the intent to deprive the owner of the rights and benefits of ownership.

Otherwise stated, the word "steal" is used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another and deprives the owner of the rights and benefits of ownership but may or may not involve the element of stealth. To steal means to take away from one in lawful possession without right with the intention to keep it wrongfully.

The government must establish the value of the property stolen because the law provides a greater penalty if the value of the property exceeds \$100. Value under the statute means face, par or market value or cost price either wholesale or retail, whichever is greater. The value of the property stolen is a question of

2 fact to be determined by the jury.

3 In order to authorize the greater penalty,
4 the government must establish beyond a reasonable
5 doubt that the value of the property exceeds \$100.

6 Possession of property recently stolen, if
7 not satisfactorily explained, is ordinarily a
8 circumstance from which the jury may reasonably
9 draw the inference and find, in the light of
10 surrounding circumstances shown by the evidence
11 in the case, that the person in possession knew
12 the property had been stolen.

13 Ordinarily, the same inference may reason-
14 ably be drawn from a false explanation of
15 possession of recently stolen property.

16 The term "recently" is a relative term,
17 and has no fixed meaning. Whether property may
18 be considered as recently stolen depends upon the
19 nature of the property, all the facts and circum-
20 stances shown by the evidence in the case. The
21 longer the period of time since the theft, the
22 more doubtful becomes the inference which may
23 reasonably be drawn from unexplained possession.

24 If you find beyond a reasonable doubt from
25 the evidence in the case that the cartons of Timex

Charge

1 watches described in the indictment were stolen,
2 and that, while recently stolen, the property was
3 in the possession of the accused, you may, from
4 those facts, draw the inference that the property
5 was possessed by the accused with knowledge that
6 the property was stolen, unless possession of the
7 recently stolen property by the accused is
8 explained to the satisfaction of the jury by other
9 facts and circumstances in evidence in the case.
10

11 In considering whether possession of recently
12 stolen property has been satisfactorily explained,
13 you are reminded that, in the exercise of
14 constitutional rights, the accused need not take
15 the witness stand and testify.

16 There may be opportunities to explain
17 possession by showing other facts and circumstances,
18 independent of the testimony of the accused.

19 You will always bear in mind that the law
20 never imposes upon a defendant in a criminal case
21 the burden or duty of calling any witnesses or
22 producing any evidence.

23 It is the exclusive province of the jury
24 to determine whether the facts and circumstances
25 shown by the evidence in the case warrant any

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inference which the law permits you to draw from possession of recently stolen property. If any possession the accused may have had of recently stolen property is equally consistent with innocence, or if you entertain reasonable doubt of guilt, you must acquit the accused.

Again, more specifically, in addition to considering other factual circumstances on the question of the defendants' alleged guilty knowledge, if you find beyond a reasonable doubt that any of the defendants were in possession of watches which had been recently stolen, you may, but need not infer from that fact alone that a defendant knew that the watches in question were stolen. The rationale behind this inference is that possession of the fruits of the crime shortly after its commission justify the inference that the possession is guilty possession, and though only prima facie evidence of guilt, it may be of controlling weight unless explained by the circumstances surrounding the possession or accounted for in some other way consistent with innocence.

It is obvious that as to the charges

2 contained in the indictment, one of the critical
3 questions is whether the defendants knew they had
4 possession of stolen watches. Actual knowledge
5 that a defendant received and then possessed
6 stolen watches is one of the essential elements
7 of the offense charged.

8 You may not find a defendant guilty unless
9 you find beyond a reasonable doubt that he or she
10 knew that he or she received and was then in
11 possession of stolen merchandise. The fact of
12 knowledge may be established by direct or circum-
13 stancial evidence just as any other fact in the
14 case. Knowledge may be proven by a defendant's
15 conduct since we have no way of looking into a
16 person's mind directly.

17 Two of the defendants have flatly testified
18 that they had no such knowledge. Now, in this
19 connection bear in mind that one may not willfully
20 and intentionally remain ignorant of a fact,
21 important and material to his conduct, in order to
22 escape the consequences of the criminal law.

23 If you find from all the evidence beyond a
24 reasonable doubt that any defendant believed he
25 or she received and was then in possession of stolen

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watches and deliberately and consciously tried to avoid learning that the watches in question were stolen in order to be able to say, should he or she be apprehended, that he or she did not know, you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In other words, you may find that any defendant acted knowingly if you find that either he or she actually knew that he or she had received stolen watches or that he or she deliberately closed his or her eyes to what he or she had every reason to believe was the fact.

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2 THE COURT: (Continuing.) I should like to
3 emphasize, ladies and gentlemen, that the requisite
4 knowledge cannot be established by demonstrating
5 merely negligence or even foolishness on the part
6 of a defendant.

7 One of the elements of the crime charged is
8 that the accused knew that the Timex watches he,
9 she or they possessed were stolen. As I have
10 already instructed you, that must be proven beyond
11 a reasonable doubt.

12 Knowledge is something that you cannot see
13 with the eye or touch with the finger. It is
14 seldom possible to prove it by direct evidence.
15 The government relies largely on circumstantial
16 evidence in this case to establish knowledge.

17 In deciding whether a defendant knew the
18 Timex watches were stolen, you should consider
19 all the circumstances, such as how a defendant
20 handled the transaction, how he, she or they
21 conducted himself, herself or themselves. Do his,
22 her or their actions betray guilty knowledge that
23 he, she or they were dealing with stolen watches
24 or are the actions those of a duped, innocent man
25 or woman or one who is just acting negligently or

2 carelessly.

3 Guilty knowledge cannot be established by
4 demonstrating merely negligence or even foolishness
5 on the part of a defendant.

6 Knowledge that the goods have been stolen
7 may be inferred from circumstances that would
8 convince a man of ordinary intelligence that this
9 is a fact. The element of knowledge may be
10 satisfied by proof that a defendant deliberately
11 closed his or her eyes to what otherwise would
12 have been obvious to him or her.

13 In this connection you should scrutinize
14 the entire conduct of a defendant at or near the
15 time the offenses are alleged to have been
16 committed.

17 The law recognizes two kinds of possession:
18 Actual possession and constructive possession. A
19 person who knowingly has direct physical control
20 over a thing, at a given time, is then in actual
21 possession of it.

22 A person who, although not in actual
23 possession, knowingly has both the power and the
24 intention, at a given time, to exercise dominion
25 or control over a thing, either directly or through

2 another person or persons, is then in constructive
3 possession of it.

4 The law recognizes also that possession may
5 be sole or joint. If one person alone has actual
6 or constructive possession of a thing, possession
7 is sole. If two or more persons share actual or
8 constructive possession of a thing, possession is
9 joint.

10 You may find that the element of possession
11 as that term is used in these instructions is
12 present if you find beyond a reasonable doubt that
13 a defendant had actual or constructive possession,
14 either alone or jointly with others.

15 An act or failure to act is "knowingly"
16 done if done voluntarily and intentionally, not
17 because of mistake or accident or other innocent
18 reason.

19 In connection with the question of possession,
20 bear in mind that Count 2 charges a violation of
21 Section 2 of Title 18 of United States Code, the
22 so-called aiding and abetting section, which
23 reads:

24 "Whoever commits an offense against the
25 United States, or aids, abets, counsels, commands,

2 induces, or procures its commission, is punishable
3 as a principal.

4 "Whoever willfully causes an act to be done,
5 which if directly performed by him or another
6 would be an offense against the United States, is
7 punishable as a principal."

8 The guilt of a defendant may be established
9 without proof that the accused personally did
10 every act constituting the offense charged.

11 In other words, every person who willfully
12 participates in the commission of a crime may be
13 found guilty of that offense. Participation is
14 willful if done voluntarily and intentionally, and
15 with a specific intent to do something the law
16 forbids, or with a specific intent to fail to do
17 something the law requires to be done; that is to
18 say, with bad purpose either to disobey or to
19 disregard the law.

20 In order to aid and abet another to commit
21 a crime, it is necessary that the accused willfully
22 associate himself in some way with the criminal
23 venture, and willfully participate in it as he
24 would in something he wishes to bring about; that
25 is to say, that he willfully seek by some act or

omission of his to make the criminal venture succeed.

An act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that a defendant aided and abetted the crime, unless you find beyond a reasonable doubt that a defendant was a participant and not merely a knowing spectator.

Now going to Count 1 of the indictment.
Count 1, which is the first count:

"On or about and between the 17th day of

March, 1975 and the 27th day of March, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, James Grimsley, Leonard Nitti, Janet Terri also known as Janet Perry, Robert Schoenly, Pete Areiter, Louis Bovell, John Freudiger and Morton Hanan did knowingly, intentionally and willfully combine, conspire, confederate and agree, together with Barbara Carson, named as a co-conspirator but not as a defendant herein, and with others, to commit an offense against the United States in violation of Title 18, United States Code, Section 659 and Section 2, to wit, to knowingly and willfully receive and have in their possession approximately 117 cartons of Timex watches, having a value of approximately \$830,000, which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York, on March 17th, 1975, while moving as part of a foreign shipment of freight from Taipai, Taiwan to Queens, New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, James Grimsley, Leonard Nitti, Janet Terri also known as

Janet Perry, Robert Schoenly, Peter Areiter, Louis Bovell, John Freudiger and Morton Hanan then knowing the said goods to have been stolen.

"In furtherance of said conspiracy and to effect the objects thereof, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, James Grimsley, Leonard Nitti, Janet Terri also known as Janet Perry, Robert Schoenly, Peter Areiter, Louis Bovell, John Freudiger and Morton Hanan and the unindicted co-conspirator, Barbara Carson, committed the following overt acts:

"One, on or about March 17, 1975 the defendants Donald Walsh, Thomas M. Burns, Peter Areiter, Louis Bovell and Morton Hanan met at Lynbrook, New York.

"Two, on or about March 21, 1975, the defendant Janet Terri also known as Janet Perry made a telephone call to Hub Truck Rental Company.

"Three, on or about March 21, 1975, the defendant Robert Schoenly rented a truck.

"Four, on or about March 24, 1975, the defendants William J. Joyce, Thomas M. Burns and Leonard Nitti met at Lynbrook, New York.

"Five, on or about March 27, 1975, the

defendants William J. Joyce, Edward J. Boyle, Thomas M. Burns and James Grimsley, and unindicted co-conspirator Barbara Carson, met at Brooklyn, New York, all in violation of Title 18, United States Code, Section 371."

Section 371 of Title 18 of the United States Code provides, in pertinent part:

"If two or more persons conspire ... to commit any offense against the United States ... and one or more of such persons do any act to effect the object of the conspiracy, each" is guilty of an offense against the United States.

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy charged in this indictment.

One, that there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment;

Two, that the conspiracy described in the indictment was willfully formed and existed at or about the time alleged;

Three, that the conspiracy was so willfully formed and existing for the purpose of receiving and

1 having in the possession of one or more conspirators
2 cartons of Timex watches which had been embezzled,
3 stolen, or unlawfully taken, carried away or concealed
4 from an aircraft, air terminal, airport, aircraft
5 terminal or air navigational facility which cartons
6 had been moving as a part of or which constituted a
7 foreign shipment of freight, express or other
8 property, the accused knowing the same to have been
9 stolen;
10

11 Four, that the accused willfully became a
12 member of the conspiracy;

13 Five, that one of the co-conspirators there-
14 after knowingly committed one of the overt acts charged
15 in the indictment at or about the time and place
16 alleged;

17 Six, that such overt act was knowingly done
18 in furtherance of the object of the conspiracy as
19 charged; and

20 Seven, that the accused was knowingly and
21 willfully a member of the conspiracy with the intent
22 to further one of its objectives.

23 If the jury should find beyond a reasonable
24 doubt from the evidence in the case that the
25 existence of the conspiracy charged in the indictment

1 has been proved, and that during the existence of the
2 conspiracy one of the overt acts alleged was
3 knowingly done by one or more of the conspirators in
4 furtherance of some object or purpose of the conspiracy,
5 then proof of the conspiracy offense charged is
6 complete.
7

8 Now what is a conspiracy? A conspiracy is a
9 combination of two or more persons, by concerted action,
10 to accomplish some unlawful purpose. So, a conspiracy
11 is a kind of "partnership in criminal purposes," in
12 which each member becomes the agent of every other
13 member. The gist of the offense is a combination or
14 agreement to disobey, or to disregard, the law.

15 Mere similarity of conduct among various
16 persons, and the fact that they may have associated
17 with each other, and may have assembled together and
18 discussed common aims and interests, does not
19 necessarily establish proof of the existence of a
20 conspiracy.

21 However, the evidence in the case need not show
22 that the members entered into any express or formal
23 agreement, or that they directly, by words spoken or
24 in writing, stated between themselves what their
25 object or purpose was to be, or the details thereof,

1 or the means by which the object or purpose was to be
2 accomplished.
3

✓ 4 what the evidence in the case must show beyond
5 a reasonable doubt, in order to establish proof that
6 a conspiracy existed, is that the members in some way
7 or manner, or through some contrivance, positively
8 or tacitly, came to a mutual understanding to try to
9 accomplish a common and unlawful plan.

10 The evidence in the case need not establish
11 that all the means or methods set forth in the
12 indictment were agreed upon to carry out the alleged
13 conspiracy; nor that all means or methods which were
14 agreed upon, were actually used or put into operation;
15 nor that all of the persons charged to have been
16 members of the alleged conspiracy were such.

17 What the evidence in the case must establish
18 beyond a reasonable doubt is that the alleged
19 conspiracy was knowingly formed, and that one or more
20 of the means or methods described in the indictment
21 were agreed upon to be used, in an effort to effect
22 or accomplish some object or purpose of the conspiracy,
23 as charged in the indictment; and that two or more
24 persons, including one or more of the accused, were
25 knowingly members of the conspiracy as charged in the

indictment.

In your consideration of the evidence in the case as to the offense of the conspiracy charged, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused willfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed, and that a defendant lawfully became a member of the conspiracy either at its inception or afterwards, and that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed so doing.

The extent of any defendant's participation, moreover, is not determinative of his or her guilt or innocence. A defendant may be convicted as a conspirator even though he or she may have played only a minor part in the conspiracy.

1
2 THE COURT: (Continuing): Merely because the
3 evidence shows that any of the defendants knew or were
4 acquainted with other parties to this matter is not
5 sufficient in and of itself and without more proof of
6 a defendant's guilt or proof of his or her
7 participation in the alleged conspiracy.

8 Each defendant must be judged upon the
9 evidence with respect to him or her, not solely upon
10 whom he or she knew or with whom he or she associated.

11 An "overt act" is any act knowingly committed
12 by one of the conspirators, in an effort to effect or
13 accomplish some object or purpose of the conspiracy.
14 The overt act need not be criminal in nature, if
15 considered separately and apart from the conspiracy.
16 It may be as innocent as the act of a man walking
17 across the street, or driving an automobile, or using
18 a telephone. It must, however, be an act which
19 follows and tends toward accomplishment of the plan
20 or scheme. It must be knowingly done in furtherance
21 of some object or purpose of the conspiracy charged
22 in the indictment. It is not necessary that all of
23 the overt acts charged in the indictment were
24 performed. One overt act is sufficient.

25 One may become a member of the conspiracy

1 without full knowledge of all the details of the
2 conspiracy. On the other hand, a person who has no
3 knowledge of a conspiracy, but happens to act in a
4 way which furthers some object or purpose of the
5 conspiracy, does not thereby become a conspirator.
6

7 Before the jury may find one or more or all of
8 the defendants or any other person has become a
9 member of the conspiracy, the evidence in the case
10 must show beyond a reasonable doubt that the
11 conspiracy was knowingly formed, and that the
12 particular defendant or other person who has been
13 claimed to have been a member, willfully participated
14 in the unlawful plan, with the intent to advance or
15 further some object or purpose of the conspiracy.
16

17 To act or participate willfully means to act
18 or participate voluntarily or intentionally and with
19 specific intent to do something the law forbids; that
20 is to say, to act or participate with the bad purpose
21 either to disobey or to disregard the law.

22 So if a defendant or any other person, with
23 understanding of the unlawful character of the plan,
24 knowingly encourages, advises or assists, for the
25 purpose of furthering the undertaking or scheme, he
or she thereby becomes a willful participant; i.e., a

1 conspirator.

2
3 One who willfully joins in an existing conspiracy
4 is charged with the same responsibility as if he or she
5 had been one of the originators or instigators of
6 the conspiracy.

7 In determining whether a conspiracy existed,
8 the jury should consider the actions and the
9 declarations of all the alleged participants. How-
10 ever, in determining whether a particular defendant
11 was a member of a conspiracy, if any, the jury should
12 consider only his or her acts and statements. He or she
13 cannot be bound by the acts or declarations of other
14 participants until it is established that a
15 conspiracy existed, and that he or she was one of its
16 members.

17 Whenever it appears beyond a reasonable
18 doubt from the evidence in the case that a conspiracy
19 existed, and that a defendant was one of the members,
20 then the statements thereafter knowingly made and the
21 acts knowingly done, by any person likewise found to
22 be a member, may be considered by the jury as
23 evidence in the case as to the defendant found to
24 have been a member, even though the statements and
25 acts made may have occurred in the absence and

1 without the knowledge of the defendant, provided such
2 statements and acts were knowingly made and done
3 during the continuancy of such conspiracy, and in
4 furtherance of some object or purpose of the conspiracy.
5

6 Otherwise, any admission or incriminatory
7 statement made or act done outside of court, by one
8 person, may not be considered as evidence against any
9 person who was not present and did not hear the
10 statement made or see the act done.

11 Therefore, statements of any conspirator which
12 are not in furtherance of the conspiracy or made
13 before the existence of the conspiracy or after its
14 termination may be considered as evidence only
15 against the person making them.

16 The indictment charges a conspiracy among some
17 twelve persons, all of whom are named -- I think it's
18 thirteen, including Barbara Carson, but twelve
19 defendants, all of whom are named in the indictment
20 as co-conspirators.

21 A person cannot conspire with himself or
22 herself and, therefore, you cannot find any of the
23 defendants guilty unless you find beyond a reasonable
24 doubt that he or she participated in the conspiracy
25 as charged with at least one other person. With this

1
2 qualification you may find all of the defendants
3 guilty or some of the defendants guilty and some not
4 guilty, or all not guilty, all in accordance with
5 these instructions and the facts you find.

6 An act is done knowingly if done voluntarily
7 and intentionally and not because of mistake or
8 accident or other innocent reason.

9 The purpose of adding the word "knowingly" was
10 to ensure that no one would be convicted for an act
11 done because of mistake or accident or other
12 innocent reason.

13 As stated before, with respect to an offense
14 such as charged in this case, specific intent must
15 be proved beyond a reasonable doubt before there can
16 be a conviction.

17 An act is done willfully if done voluntarily,
18 with a specific intent to do something the law forbids;
19 that is to say, with bad purpose, either to disobey
20 or to disregard the law.

21 The weight of the evidence is not necessarily
22 determined by the number of witnesses testifying on
23 either side. You should consider all the facts and
24 circumstances in evidence to determine which of the
25 witnesses are worthy of greater credence. You may

1
2 find that the testimony of a smaller number of
3 witnesses on one side is more credible than the
4 testimony of a greater number of witnesses on the
5 other side.

6 Knowledge and intent ordinarily may not be
7 proved directly, because there is no way of fathoming
8 or scrutinizing the operations of the human mind.
9 But you may infer a defendant's knowledge and intent
10 from the surrounding circumstances. You may consider
11 any statement made and done or omitted by a defendant,
12 and all other facts and circumstances in evidence
13 which indicate his or her state of mind. It is
14 ordinarily reasonable to infer that a person intends
15 the natural and probable consequences of acts
16 knowingly done or knowingly omitted.

17 Now, statements and arguments of counsel are
18 not evidence in the case, unless made as an admission
19 or stipulation of fact.

20 When the attorneys on both sides stipulate or
21 agree as to the existence of a fact, as I believe
22 Mr. Kimelman and Mr. Kaplan did, you must, unless
23 otherwise instructed, accept the stipulation as
24 evidence and regard that fact as proved.

25 The Court may take judicial notice of certain

1 facts or events. I think I only took judicial notice
2 of one or two dates during the course of the trial.
3 When the Court declares it will take judicial notice
4 of some fact or event, you may accept the Court's
5 declaration as evidence and regard as proved the
6 fact or event which has been judicially noticed, but
7 you are not required to do so, since you are the sole
8 judges of the facts.
9

10 Unless you are otherwise instructed, the
11 evidence in the case always consists of the sworn
12 testimony of the witnesses, regardless of who may
13 have called them, and all exhibits received in
14 evidence, regardless of who may have produced them,
15 and all facts which may have been admitted or
16 stipulated and all facts and events which may have
17 been judicially noticed and all applicable
18 presumptions stated in these instructions.

19 Any evidence as to which an objection was
20 sustained by the Court, and any evidence ordered
21 stricken by the Court, must be entirely disregarded.

22 Evidence does, however, include what is
23 brought out from witnesses on cross-examination as
24 well as what is testified to on direct examination.

25 Unless you are otherwise instructed, anything

1 you may have seen or heard outside the courtroom is
2
3 not evidence and must be entirely disregarded.

4 You are to consider only the evidence in the
5 case and your verdict is to be based on the evidence
6 only. But in your consideration of the evidence, you
7 are not limited to the bald statements of the
8 witnesses. In other words, you are not limited solely
9 to what you see and hear as the witnesses testify.
10 You are permitted to draw, from facts which you find
11 have been proved, such reasonable inferences as you
12 feel are justified in the light of experience.

13 Inferences are deductions or conclusions which
14 reason and common sense lead the jury to draw from
15 facts which have been established by the evidence in
16 the case.

17 If a lawyer asks a witness a question which
18 contains an assertion of fact, you may not consider
19 the assertion as evidence of that fact. The lawyer's
20 statements are not evidence.

21 Evidence relating to any statement, or act or
22 omission, claimed to have been made or done by a
23 defendant outside of court, and after a crime has been
24 committed, should always be considered with caution
25 and weighed with great care; and all such evidence

1 should be disregarded entirely, unless the evidence
2 in the case convinces the jury beyond a reasonable
3 doubt that the statement or act or omission was
4 knowingly made or done.
5

6 A statement or act or omission is "knowingly"
7 made or done, if done voluntarily and intentionally,
8 and not because of mistake or accident or other
9 innocent reason.

10 In determining whether any statement or act
11 or omission claimed to have been made by a defendant
12 outside of court, and after a crime has been committed,
13 was knowingly made or done, the jury should consider
14 the age, sex, training, education, occupation and
15 physical and mental condition of the defendant, and
16 also all other circumstances in evidence surrounding
17 the making of the statement or act or omission,
18 including whether before the statement or act or
19 omission was made or done the defendant knew or had
20 been told and understood that he was not obligated or
21 required to make or do the act or omission claimed
22 to have been made or done by him, that any statement
23 or act or omission which he might make or do could be
24 used against him in court and he was entitled to the
25 assistance of counsel before making any statement,

oral or in writing, or before doing any act or omission, and that if he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise and represent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that an admission was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that an admission was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the admission.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on

the stand. Consider the witness' ability to observe the matters as to which he or she has testified and whether he or she impresses you as having an accurate recollection of the matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgement, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

1
2 Robert Schoenly, Peter Areiter, Thomas Burns,
3 Leonard Nitti and Edward Boyle testified that they
4 participated in the crime charged. They do not
5 become incompetent to testify in the trial because they
6 say they participated in the crime charged. They are
7 classified as alleged accomplices.

8 An accomplice is one who unites with another
9 person in the commission of a crime, voluntarily and
10 with common intent. An accomplice does not become
11 incompetent as a witness because of participation in
12 the crime charged. On the contrary, the testimony of
13 an accomplice alone, if believed by the jury, may be
14 of sufficient weight to sustain a verdict of guilty,
15 even though not corroborated or supported by other
16 evidence. However, the jury should keep in mind that
17 such testimony is always to be received with great
18 caution and weighed with great care.

19 You should never convict a defendant upon the
20 unsupported testimony of an alleged accomplice, unless
21 you believe that unsupported testimony beyond a
22 reasonable doubt.

23 (continued next page)
24
25

Charge

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1 THE COURT: (Continuing.) The testimony of a
2 witness may be discredited or impeached by showing
3 that he or she previously made statements which are
4 inconsistent with his or her present testimony. The
5 earlier contradictory statements are admissible only to
6 impeach the credibility of the witness, and not to
7 establish the truth of these statements. It is the
8 province of the jury to determine the credibility,
9 if any, to be given the testimony of a witness who has
10 been impeached.
11

12 If a witness is shown knowingly to have
13 testified falsely concerning any material matter, you
14 have a right to distrust such witness' testimony in
15 other particulars; and you may reject all the
16 testimony of that witness or give it such credibility
17 as you may think it deserves.

18 A defendant who wishes to testify is a
19 competent witness and a defendant's testimony is to be
20 judged in the same way as that of any other witness.

21 The law permits a defendant, at his own request,
22 to testify in his own behalf.

23 The testimony of two individual defendants is
24 before you. You must determine how far in each case it
25 is credible. The deep personal interest which every

defendant has in the result of this case should be considered in determining the credibility of his testimony.

In testing a defendant's credibility, the jury is obliged to consider his vital interest in the outcome of the trial.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

There has been testimony here to the previous good character of the defendants, one or more or all of the defendants. You should consider such evidence of character together with all the other facts with respect to the guilt or innocence of the defendant. Evidence of good character may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed. But if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he or she had previously enjoyed a reputation of good character does

2 not justify or excuse the offense and you should not
3 acquit a defendant merely because you believe he is a
4 person of good repute.

5 The testimony of a character witness is not to
6 be regarded by you as expressing the witness' opinion
7 as to the guilt or innocence of the defendant. The
8 guilt or innocence of the defendant is for you alone to
9 determine.

10 It is the duty of the attorney on each side of
11 a case to object when the other side offers testimony
12 or other evidence which the attorney believes is not
13 properly admissible. You should not show prejudice
14 against an attorney or his client because the attorney
15 has made objection.

16 Upon allowing testimony or other evidence to
17 be introduced over the objection of an attorney, the
18 Court does not, unless expressly stated, indicate any
19 opinion as to the weight or effect of such evidence.
20 As stated before, the jurors are the sole judges of
21 the credibility of all witnesses and the weight and
22 effect of all evidence.

23 When the Court has sustained an objection to a
24 question addressed to a witness, the jury must dis-
25 regard the question entirely, and may draw no inference

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from the wording of it, or speculate as to what the witness would have said if he or she had been permitted to answer any question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility of evidence purposes is not to be taken by you as in any way indicating that the Court has any opinion as to the guilt or innocence of a defendant in this case, and you are to draw no such inference therefrom. That determination, as to the guilt or innocence of the defendants in this case, is up to you and you alone based on all the facts in this case and the applicable law in these instructions.

There was also some proof and some discussion on the obligation, putting it in the negative, or impropriety of a lawyer going over testimony with witnesses he calls to the witness stand. It is perfectly proper for a lawyer to ask a witness what he or she knows about the case, to go over that testimony with the prospective witness and to go over it in question and answer form.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the

1 guilt or innocence of any other person or persons.
2
3 There are five defendants before you and only the five.
4 So, if the evidence in the case convinces you beyond
5 a reasonable doubt of the guilt of the accused, you
6 should so find, even though you may believe one or
7 more other persons are guilty. But if any reasonable
8 doubt remains in your minds after impartial considera-
9 tion of all the evidence in the case, with respect to
10 one or more or all of the five on trial, it is your
11 duty to find such one or more or all not guilty.

12 The verdict must represent the considered
13 judgment of each juror. In order to return a verdict,
14 it is necessary that each juror agree thereto. Your
15 verdict must be unanimous.

16 It is your duty, as jurors, to consult with one
17 another, and to deliberate with a view to reaching an
18 agreement, if you can do so without violence to
19 individual judgment. Each of you must decide the case
20 for himself and herself, but do so only after an
21 impartial consideration of the evidence in the case
22 with your fellow jurors. In the course of your
23 deliberations, do not hesitate to re-examine your own
24 views, and change your opinion, if convinced it is
25 erroneous. But do not surrender your honest

Charge

conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

It is your duty to give separate personal consideration to the case of each individual defendant, each of the five individual defendants before you.

When you do so, you should analyze what the

Charge

7 1
2 evidence shows with respect to that individual, leaving
3 out of consideration entirely any evidence admitted
✓ 4 solely against the other defendants.

5 You must reach a separate unanimous verdict of
6 guilty or not guilty as to each individual defendant.

7 At any time during your deliberations you may
8 return into Court your verdict with respect to any
9 defendant as to whom you have unanimously agreed, but
10 you must render a verdict with respect to each of the
11 five defendants on each of the two counts in the
12 indictment, a separate verdict with respect to each of
13 the five defendants on each of the two counts in the
14 indictment.

15 If any reference by the Court or by counsel to
16 matters of evidence does not coincide with your own
17 recollection, it is your recollection which should
18 control during your deliberations.

19 The punishment provided by law for the offenses
20 charged in the indictment is a matter exclusively
21 within the province of the Court, and should never be
22 considered by the jury in any way in arriving at an
23 impartial verdict as to the guilt or innocence of the
24 accused.

25 Upon retiring to the jury room, the juror

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seated closest to me, in the gray suit, Juror Number 1, will act as your foreman, unless he elects not to do so. If he elects not to do so, then you will elect a foreman or forelady from amongst your number.

The foreman will preside over your deliberations, and will be your spokesman here in Court.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a bailiff, signed by your foreman, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open Court.

I said you may send a note by a "bailiff." I meant you may send a note by a deputy marshal. He will be outside the jury room door.

You will note from the oath about to be taken by the deputy marshals, that they too as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also, because this is very

important, that you are never to reveal to any person, not even to the Court, not to anyone connected with the Court how the jury stands numerically or otherwise on the question of the guilt or innocence of any of the accused until after you have reached a unanimous verdict.

When, as and if you reach an unanimous verdict, you are to write me a note and say "We have reached a unanimous verdict."

Do not tell me what the verdict is, but "We have reached a unanimous verdict."

You state your verdict here in open Court. You do not send it to me in a note. Do not send me a note saying we stand thus and so for acquittal or conviction or vice versa, at any stage of the proceedings. If you do, it may be necessary to declare a mistrial and retry the whole case at considerable expense and effort to all of the parties, with a new jury.

So do not send me such a note. Send me notes only when, as and if you reach a unanimous verdict, and then only so state. Do not state any more than that, that we have reached a unanimous verdict.

All right. Ladies and gentlemen, you may retire to the jury room for just a few moments while I

1 [1509a]

Charge

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2 discuss some legal questions with the attorneys. Do
3 not begin discussing the case at this stage. I will
4 recall you and let you know when you may.

5 (Continued next page.)

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518a

(The following occurred in the absence of the jury.)

MR. VERDIRAMO: Your Honor, I just repeat for the record my objections to request No. 2 of the Government, and also any other such part of your charge where it referred to any of the other defendants testifying and any weight that may be given to their testimony.

THE COURT: I beg your pardon? And also to what?

MR. VERDIRAMO: To any other part of your charge not specifically picking any of it out, wherein you may have referred to any of the other defendants taking the stand and any weight that's being given to their testimony. Only because I feel in this situation it puts an undue prejudice upon my client, Mr. Joyce.

THE COURT: You are sort of caught between the devil and the deep blue sea.

MR. VERDIRAMO: I guess so.

MR. O'BRIEN: Your Honor, I take exception to your Honor's charge on the possession of recently stolen property. Not the first charge, and I believe that was your Honor's charge, but rather the

2

1 Government's request to charge, wherein or, rather
2 than read it all, from that portion which starts
3 "The rationale behind the inference," right down to
4 the conclusion consistent with innocence.

5 Secondly, on character testimony, I take
6 exception to that portion of your Honor's charge which
7 started with "But if," and there on down to the
8 conclusion of the charge -- conclusion of the charge
9 on character testimony.

10 THE COURT: You have to re-write Devitt and
11 Blackmoor.

12 MR. O'BRIEN: Your Honor, I still take
13 exception to it.

14 THE COURT: All right.

15 MR. O'BRIEN: I further take exception to that
16 charge regarding the -- I believe that you stated,
17 your Honor, that the defendant must have actual
18 knowledge that he had possession and that the watches
19 were stolen, rather than stating that he must -- must
20 have actual knowledge that he -- that the watches were
21 stolen.

22 Does the Court understand what I mean?

23 THE COURT: I understand. I think I said it
24 right,

25 MR. O'BRIEN: Your Honor, I would again request

1 that the Court charge the jury that they must find,
2 beyond a reasonable doubt, the defendant had actual
3 knowledge before they can - actual knowledge that the
4 goods were stolen before they can convict him.

5 I also take exception to that portion of your
6 Honor's charge wherein you stated that the defendant
7 may not intentionally remain ignorant of the fact and
8 in order to escape consequences of the criminal law,
9 and also to that portion wherein your Honor stated
10 that he may not deliberately and consciously try to
11 avoid learning that the watches in question were
12 stolen in order to be able to say she had or she had
13 been apprehended, that he or she did not know. You
14 may treat this deliberate avoidance as positive
15 knowledge. I think that's a complete misstatement of
16 the law, that they may treat this deliberate
17 avoidance as a positive knowledge.

18 I feel that that is exactly the same as saying
19 that the defendant knew or he should have known or
20 should have inquired, and I think that the cases --

21 THE COURT: There is a difference between what
22 you are calling passive avoidance and deliberate
23 avoidance. I think what we are dealing with here, and
24 I think what Mr. Kimelman's charge and my charge,
25 the portion I took his wording instead of my wording,

1 which was essentially the same. I had it from
2 independent sources. It is that if there is a
3 deliberate avoidance of knowledge, it is the equivalent
4 of knowledge.

5 You cannot close your eyes as to what you
6 ought to see.

7 MR. O'BRIEN: Your Honor, I don't believe
8 that's what the law is.

9 THE COURT: It is what is known as deliberate
10 avoidance. It is different than failure to see.

11 MR. O'BRIEN: Well, your Honor, I can see that
12 if —

13 THE COURT: There is no point in arguing. We
14 have been over it once.

15 MR. O'BRIEN: True.

16 MR. SPERLING: I join in all of Mr. O'Brien's
17 objections because they're peculiarly applicable to
18 myself. Probably to other defendants, too.

19 THE COURT: To your client.

20 MR. VERDIRAMO: I join, also.

21 MR. CORBETT: They apply to your client,
22 Mr. Sperling.

23 THE COURT: Peculiarly applicable to your
24 client, not to you. You are not on trial yet.

25 MR. SPERLING: Your Honor, I remember very well

1 a charge to a jury --

2 THE COURT: All right, no more.

3 Do you have any exceptions?

4 MR. CORBETT: No exceptions.

5 MR. KAPLAN: I have nothing further, your Honor.

6 THE COURT: Mr. Verdiramo, you stated yours.

7 MR. VERDIRAMO: Yes, your Honor.

8 MR. KIMELMAN: I have no exceptions, your Honor.

9 THE COURT: All right. You may bring the jury
10 in.

11 (Jury present.)

12 THE COURT: All right. Now, ladies and
13 gentlemen, I will begin with the alternates.

14 Alternate jurors, your time has come. Your services
15 are not needed for the deliberations themselves, and
16 so that you will be excused at this point with the
17 thanks of the Court for your attention to this case
18 over the past two weeks.

19 I do not know whether it is more fun to sit as
20 an alternate or as a juror. I have never sat as
21 either one. I would suspect you do not have to do
22 the additional final work, which is sometimes very
23 hard work of deliberating, and yet you get to hear
24 all of the case.

25 In any event, your duties are finished. You

1 should report to the Central Jury Room and you will
2 get instructions as to what, if any, additional duties
3 are required of you as jurors.

4 So you go with the thanks of the Court and with
5 the entire community. You should go now, picking up
6 anything you have in the jury r-om and then go down
7 to the elevator and then I will send the rest of the
8 jurors in right after you.

9 THE CLERK: Take your cards downstairs, please.

10 (Alternate jurors leave courtroom.)

11 THE COURT: Will you swear the marshals in,
12 please?

13 THE CLERK: Yes, your Honor.

14 (One male marshal and one female marshal duly
15 sworn by Clerk of Court.)

16 THE COURT: Ladies and gentlemen, I am sure
17 you realize the importance of the task that you are
18 about to perform. It is a very serious one and a
19 very significant one.

✓ 20 You have been given the arguments^sby all the
21 counsel and instructions by the Court and you should
✓ 22 do your duty in accordance with your own consciences
23 and do the best you can, given the case as it has been
24 given to you.

25 As I indicated to you, if you want any of the

[1516]

exhibits you should send me a note and ask for them.

If you want a copy of the indictment, you should send me a note and ask for it.

And if you want any portion -- by "portions" I mean portions -- of any testimony re-read, you may have it re-read. I would request and sincerely urge that you not make such requests unless you feel it is necessary. In other words, I do not want to re-try the case on reading the testimony, unless you feel it is necessary in your collective wisdom.

Now you may go and discuss the case.

(The jury began their deliberations at 10:50 A.M. and the following occurred in their absence.)

MR. O'BRIEN: Your Honor, I am sorry. The Court Reporters have advised me that we will not get the summations. I understand that the Government is getting the summations.

THE COURT: What do you want them for? You can look at my copy.

MR. O'BRIEN: Thank you.

MR. SPERLING: Thank you.

(Recess taken.)

[1517]

1 THE COURT: The first note we will mark is the
2 one asking for coffee.

3 I have a second juror's note -- the first one
4 having asked for coffee -- this one asks for pictures
5 of boxes from the FBI building, signed by Mr. Roberts.

6 MR. KIMELMAN: That's no problem, Judge.

7 THE COURT: Will you mark that Court Exhibit 2.

8 MR. O'BRIEN: Pictures of boxes.

9 THE COURT: FBI building.

10 MR. O'BRIEN: FBI bill?

11 THE COURT: Pictures of boxes from the FBI
12 building.

13 MR. O'BRIEN: Oh, building. That's what I
14 didn't get.

15 MR. KIMELMAN: Your Honor, I believe this is
16 what they're referring to.

17 THE COURT: Does everybody agree.

18 MR. O'BRIEN: Yes.

19 THE COURT: That's Exhibits 13 and 14.

20 All right, bring them in.

21 Wait a minute. Any objection to just sending
22 them in.

23 MR. VERDIRAMO: No objection.

24 THE COURT: Let the record show that we sent
25 Exhibits 13 and 14 into the jury.

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[1518]

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MR. O'BRIEN: Your Honor, I have one thing I would like to discuss with your Honor.

I have just read the Joly case and the Olivares-Vega case on the studied ignorance charge as those cases have termed it. Both of those cases, your Honor, did involve narcotics.

Secondly, no objection was taken. And the Court -- the Court of Appeals was deciding that on the plain error rule.

The third thing that distinguishes it from this case, in my opinion, is that in those cases there was no evidence whatever of knowledge.

And in one of those cases, a man came through customs with cocaine strapped to his body. And the other case, it was a suitcase involving cocaine that he admits was heavy and knew something was in there. But his testimony was that he had no direct knowledge that it was cocaine.

I think they are distinguishable. I recognize the jury has already been charged. The only reason I bring this up, your Honor, is that in the event -- I think it is possible the jury may again request a charge on knowledge. I would ask the Court if that happens to merely charge them that the government must prove beyond a reasonable doubt that the defendants

1 had actual knowledge.

2 I said my peace.

3 THE COURT: You are anticipating something that
4 may never occur.

5 MR. O'BRIEN: True. It may never occur. But
6 if it does occur, I want the Court to be persuaded
7 that you should charge as I ask.

8 THE COURT: I think my charge was correct.

9 MR. VERDIRAMO: I join in that.

10 THE COURT: If the Court of Appeals disagrees,
11 they disagree.

12 MR. O'BRIEN: I hope I never have to go to the
13 Court of Appeals and find out.

14 MR. VERDIRAMO: Can we go to lunch.

15 THE COURT: No. 1:00 o'clock.

16 What time did you order lunch for them?

17 DEPUTY MARSHAL: 12:30, quarter to 1:00.

18 THE COURT: All right. When their lunch
19 arrives, let the jurors know that I will let the
20 lawyers go for an hour after that.

21 MR. CORBETT: I believe the lunch has arrived.

22 THE COURT: Has it?

23 THE CLERK: That was coffee.

24 MR. CORBETT: Oh, I am sorry.

25 THE COURT: All right.

1 (Recess taken.)

2 THE COURT: All right, they want the
3 explanation of one, the charge of conspiracy, and two,
4 the charge of possession.

5 I told you you are anticipating something that
6 wouldn't occur, Mr. O'Brien.

7 MR. SPERLING: He knew.

8 THE COURT: He didn't know. He guessed wrong.
9 Will you mark that Court Exhibit No. 3.

10 THE CLERK: Juror's note received as Court
11 Exhibit 3.

12 THE COURT: All right, we will give them a
13 rereading of the charge of conspiracy and a rereading
14 of the charge of possession.

15 (Whereupon, the jury entered the jury box.)

16 THE COURT: I have your note, ladies and
17 gentlemen. I am going to take it literally based on
18 the wording of it. I am going to read to you first
19 the charge with respect to possession.

20 Now, this has nothing to do with knowledge. I
21 am just going to read to you the charge with respect
22 to possession. If you want further instructions on
23 this question, of course, you will have to ask.

24 But on the question of possession and possession
25 alone, I charged you as follows:

The law recognizes two kinds of possession:

Actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual constructive possession of a thing, possession is joint.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

An act or failure to act is "knowingly" done, if done voluntarily and intentionally, not because of mistake or accident or other innocent reason.

Now, in connection with the question of

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1 possession I also read to you the aiding and abetting
2 section of the statute. The aiding and abetting
3 section. And I gave you certain instructions with
4 respect to aiding and abetting which, since you
5 haven't asked for it, I am not going to read to you
6 again. But if you want them, of course, you may have
7 them read.

8 On the question of conspiracy, that is a little
9 longer. I will not reread the indictment on the
10 conspiracy charge. However, I will read the balance
11 of it to you.

12 Section 371 of Title 18 of the United States
13 Code provides in pertinent part that:

14 "If two or more persons conspire ... to commit
15 any offense against the United States ... and one or
16 more of such persons do any act to effect the object
17 of the conspiracy, each ..." is guilty of an offense
18 against the United States.

19 The following are the essential elements which
20 are required to be proven beyond a reasonable doubt
21 in order to establish the offense of conspiracy
22 charged in this indictment.

23 One. That there was an agreement or conspiracy
✓ 24 between two or more persons to violate the law as
25 charged in the indictment;

1 Two. That the conspiracy described in the
2 indictment was willfully formed and existed at or about
3 the time alleged;

4 Three. That the conspiracy was so willfully
5 formed and existing for the purpose of receiving and
6 having in the possession of one or more conspirators
7 cartons of Timex watches which had been embezzled,
8 stolen or unlawfully taken, carried away or concealed
9 from an aircraft, air terminal, airport, aircraft
10 terminal, or air navigational facility which cartons
11 had been moving as a part of or which constituted a
12 foreign shipment of freight, express or other property,
13 the accused knowing the same to have been stolen;

14 Four. That the accused willfully became a
15 member of the conspiracy;

16 Five. That one of the conspirators thereafter
17 knowingly committed one of the overt acts charged in
18 the indictment at or about the time and place alleged;

19 Six. That such overt act was knowingly done
20 in furtherance of the object of the conspiracy as
21 charged; and

22 Seven. That the accused was knowingly and
23 willfully a member of the conspiracy with the intent
24 to further one of its objectives.

25 If the jury should find beyond a reasonable

1 doubt from the evidence in the case that existence of
2 the conspiracy charged in the indictment has been
3 proved, and that during the existence of the conspiracy
4 one of the overt acts alleged was knowingly done by one
5 or more of the conspirators in furtherance of some
6 object or purpose of the conspiracy, then proof of the
7 conspiracy offense charged is complete.

8 A conspiracy is a combination of two or more
9 persons, by concerted action, to accomplish some
10 unlawful purpose. So, a conspiracy is a kind of
11 "partnership in criminal purposes," in which each
12 member becomes the agent of every other member. The
13 gist of the offense is a combination or agreement to
14 disobey, or to disregard the law.

15 Mere similarity of conduct among various persons,
16 and the fact they may have associated with each other,
17 and may have assembled together and discussed common
18 aims and interests, does not necessarily establish
19 proof of the existence of a conspiracy.

20 However, the evidence in the case need not show
21 that the members entered into any express or formal
22 agreement, or that they directly, by words spoken or
23 in writing, stated between themselves what their object
24 or purpose was to be, or the details thereof, or the
25 details thereof, or the means by which the object or

1 purpose was to be accomplished.

2 What the evidence in the case must show beyond
3 a reasonable doubt, in order to establish proof that
4 a conspiracy existed, is that the members in some way
5 or manner, or through some contrivance, positively or
6 tacitly came to a mutual understanding to try to
7 accomplish a common and unlawful plan.

8 The evidence in the case need not establish that
9 all the means or methods set forth in the indictment
10 were agreed upon to carry out the alleged conspiracy;
11 nor that all means or methods which were agreed upon
12 were actually used or put into operation; nor that all
13 of the persons charged to have been members of the
14 alleged conspiracy were such. What the evidence in the
15 case must establish beyond a reasonable doubt is that
16 the alleged conspiracy was knowingly formed, and that
17 one or more of the means or methods described in the
18 indictment were agreed upon to be used in an effort to
19 effect or accomplish some object or purpose of the
20 conspiracy, as charged in the indictment; and that two
21 or more persons, including one or more of the accused
22 were knowingly members of the conspiracy, as charged in
23 the indictment.

24 In your consideration of the evidence in the
25 case as to the offense of conspiracy charge, you should

1 first determine whether or not the conspiracy existed,
2 as alleged in the indictment. If you conclude that
3 the conspiracy did exist, you should next determine
4 whether or not each of the accused willfully became a
5 member of the conspiracy.

6 If it appears beyond a reasonable doubt from the
7 evidence in the case that the conspiracy alleged in
8 the indictment was willfully formed, and that a
9 defendant lawfully became a member of the conspiracy
10 either at its inception or afterwards, and that there-
11 after one or more of the conspirators committed one or
12 more overt acts in furtherance of some object or purpose
13 of the conspiracy, then there may be a conviction even
14 though the conspirators may not have succeeded in
15 accomplishing their common object or purpose and in
16 fact may have failed so doing.

17 The extent of any defendant's participation,
18 moreover, is not determinative of his or her guilt or
19 innocence. A defendant may be convicted as a
20 conspirator even though he or she may have played only a
21 minor part in the conspiracy.

22 Merely because the evidence shows that any of
23 the defendants knew or were acquainted with other
24 parties to this matter is not in and of itself and
25 without more proof of any defendant's guilt or his or

1 her participation in the alleged conspiracy. Each
2 defendant must be judged upon the evidence with respect
3 to him or her, not solely upon whom he or she knew or
4 with whom he or she associated.

5 An "overt act" is any act knowingly committed by
6 one of the conspirators, in an effort to effect or
7 accomplish some object or purpose of the conspiracy.
8 The overt act need not be criminal in nature, if
9 considered separately and apart from the conspiracy.
10 It may be as innocent as the act of a man walking
11 across the street or driving an automobile, or using
12 a telephone. It must, however, be an act which follows
13 and tends towards accomplishment of the plan or scheme;
14 it must be knowingly done in furtherance of some object
15 or purpose of the conspiracy charged in the indictment.
16 It is not necessary that all of the overt acts charged
17 in the indictment were performed. One overt act is
18 sufficient.

19 (Continued next page.)
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1 THE COURT: (Continuing) One may become a
2 member of the conspiracy without full knowledge of
3 all the details of the conspiracy. On the other hand,
4 a person who has no knowledge of a conspiracy, but
5 happens to act in a way which furthers some object or
6 purpose of the conspiracy, does not thereby become a
7 conspirator.

8 Before the jury may find one or more or all of
9 the defendants or any other person has become a member
10 of the conspiracy, the evidence in the case must show
11 beyond a reasonable doubt that the conspiracy was
12 knowingly formed and that the particular defendant or
13 other person who has been claimed to have been a
14 member, willfully participated in the unlawful plan,
15 with the intent to advance or further some object or
16 purpose of the conspiracy.

17 To act or participate willfully means to act
18 or participate voluntarily or intentionally and with
19 specific intent to do something the law forbids...that
20 is to say, to act or participate with the bad purpose
21 either to disobey or to disregard the law. So, if a
22 defendant or any other person, with understanding of
23 the unlawful character of the plan, knowingly
24 encourages, advises or assists, for the purpose of
25 furthering the undertaking or the scheme, he or she
thereby

becomes a willful participant -- a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he or she had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and the declarations of all the alleged participants. However, in determining whether a particular defendant was a member of a conspiracy, the jury should consider only his or her acts and statements. He or she cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he or she was one of the members.

whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy

of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done.

Therefore, statements of any conspirator which are not in furtherance of the conspiracy or made before its existence or after its termination may be considered as evidence only against the person making them.

Now, the indictment charges a conspiracy among the twelve defendants and Barbara Carson, who is not a defendant, all of whom are named in the indictment as co-conspirators. A person cannot conspire with himself or herself, and, therefore, you cannot find any of the defendants guilty unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other person. With this qualification, you may find all of the defendants guilty or some of the defendants guilty and some not guilty, or all not guilty, all in accordance with these instructions and the facts which you find.

Those are the instructions on possession and

4 1 conspiracy.

2 Has your lunch arrived?

3 DEPUTY MARSHAL: Yes.

4 THE COURT: Well, unless you have some other
5 questions you think you are going to have immediately,
6 I would propose to let the attorneys go and have them
7 come back at two o'clock and let you eat your lunch.
8 So hold your notes until then.

9 Do you want to take a couple of minutes to see
10 whether you have any immediate questions? Why don't
11 you go? If we don't receive a note from you in the
12 next two or three minutes, I will let them go to
13 lunch.

14 (Whereupon, the jury retired from the
15 courtroom.)

16 MR. O'BRIEN: I would appreciate it if your
17 Honor would refrain from mentioning any other elements
18 or any other instructions that you have given to the
19 jury.

20 For example, your Honor said that in connection
21 with the possession, "I read the aiding and abetting
22 statute."

23 THE COURT: You may appreciate it or not, as
24 you wish. And I did. And I specifically called
25 their attention to it in the main charge. So under

1 the circumstances I called it to their attention at
2 this juncture. The same as I did in the main charge.
3 I read Mr. Verdiramo's request with respect to
4 conspiracy. And in this charge I read Mr. Verdiramo's
5 instructions.

6 I am not here to mislead the jury. I am here
7 to make sure they understand it.

8 MR. O'BRIEN: Your Honor, I am not here to
9 mislead the jury or mislead the Court or to do
10 anything other than to protect a client that the
11 Court appointed me to represent. And I do that to
12 the best of my ability. And I think your Honor is
13 misinterpreting what I am saying.

14 What I do object to -- and I will give you the
15 specific reason. Your Honor did mention the charge
16 of knowledge. Now, I don't want that charge read.
17 Of course, if the jury requests that charge, then
18 your Honor has to.

19 THE COURT: Knowledge and possession are inter-
20 related in the case. And I wanted to make sure that
21 they understand what they are getting when I read
22 them solely on the question of possession. You've
23 got to remember that the jurors are not lawyers.
24 And jurors may want something other than what they
25 write down.

[1533]

MR. O'BRIEN: Well, I would request that we wait until they write it down.

THE COURT: They just requested something.

"No more information needed."

MR. O'BRIEN: Oh, thank God.

THE CLERK: Juror's note received as Court Exhibit 4.

THE COURT: All right.

(Luncheon recess.)

1
2 THE COURT: Gentlemen, they have reached a
3 verdict, apparently.

4 (Jury note marked as Court Exhibit 5 in evidence.)

5 THE COURT: Ladies and gentlemen, I have your
6 note that says you have reached a unanimous decision.
7 I assume it is in respect to all the defendants. If
8 that is the case, Mr. Foreman, would you rise and
9 answer the questions of the Court?

10 THE CLERK: Mr. Foreman, ladies and gentlemen,
11 how do you find the defendant William Joyce as to
12 count 1 of the indictment? Guilty or not guilty?

13 THE FOREMAN: Guilty.

14 THE CLERK: How do you find the defendant
15 William Joyce on count 2 of the indictment?

16 THE FOREMAN: Guilty.

17 THE CLERK: How do you find the defendant
18 Donald Walsh on count 1?

19 THE FOREMAN: Guilty.

20 THE CLERK: How do you find the defendant
21 Donald Walsh on count 2?

22 THE FOREMAN: Guilty.

23 THE CLERK: How do you find the defendant
24 James Grinsley on count 1? Guilty or not guilty?

25 THE FOREMAN: Not guilty.

1 THE CLERK: How do you find the defendant
2 James Grimsley on count 2?

3 THE FOREMAN: Guilty.

4 THE COURT: How do you find the defendant
5 Janet Terri, also known as Janet Ferry on count 1?

6 THE FOREMAN: Guilty.

7 THE COURT: How do you find the defendant Janet
8 Terri, also known as Ferry on count 2?

9 THE FOREMAN: Guilty.

10 THE COURT: How do you find the defendant
11 Louis Bovell on count 1, guilty or not guilty?

12 THE FOREMAN: Guilty.

13 THE COURT: How do you find the defendant
14 Louis Bovell on count 2?

15 THE FOREMAN: Guilty.

16 THE CLERK: Let me make sure I have it correct.
17 You find the defendant William Joyce guilty
18 on counts 1 and 2.

19 You find the defendant Donald Walsh guilty on
20 counts 1 and 2. You find the defendant James Grimsley
21 not guilty on count 1 and you find the defendant
22 Grimsley guilty on count 2.

23 You find the defendant Janet Terri, also known
24 as Ferry guilty on counts 1 and 2.

25 You find the defendant Louis Bovell guilty on

counts 1 and 2.

So say you all.

THE COURT: I will ask the Clerk to poll each one of the jurors. Answer the questions he puts to you. You do not have to stand up.

THE CLERK: Juror No. 1, is that your verdict?

JUROR NO. 1: Yes.

THE CLERK: Juror No. 2, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Juror No. 3, is that your verdict?

JUROR NO. 3: Yes.

THE CLERK: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE CLERK: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

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1 THE CLERK: Juror No. 11, is that your verdict?

2 JUROR NO. 11: Yes.

3 THE CLERK: Juror No. 12, is that your verdict?

4 JUROR NO. 12: Yes.

5 THE CLERK: So say you all.

6 THE COURT: Ladies and gentlemen, I realize
7 this is the hardest part of any case. It is not an
8 easy job for any of you to sit in judgment on the
9 facts and ultimate verdict in this case and this case
10 is no different than any of the rest. I realize it
11 has required a lot of hard work on all of your parts
12 to listen to the evidence in the case over the past
13 two weeks and do the deliberating that you have done.

14 You go with the thanks of the Court and all
15 members of the Eastern District community for this
16 very valuable service you rendered to your fellow
17 citizens in the community.

18 Please report to the Central Jury Clerk and I
19 am sure your services will be through for today.
20 Whether they want you for any additional service I
21 don't know.

22 Thank you very much and pick up your belongings
23 and proceed.

24 (Jury leaves courtroom.)

25 THE COURT: We have two things to consider:

1 Requests for motions and requests of bail with
2 respect to each defendant.

3 MR. KIMELMAN: Your Honor, with respect to
4 bail, I believe each defendant is out on \$5,000
5 personal recognizance bond. No objection to bail
6 being continued.

7 THE COURT: As to each defendant?

8 MR. KIMELMAN: Yes.

9 THE COURT: That request is granted and find in
10 continued.

11 Mr. Verdiramo, what do you wish to do with
12 respect to motions?

13 MR. VERDIRAMO: I have no motions at this time.

14 THE COURT: Are you going to waive your right?

15 MR. VERDIRAMO: I am reserving the right.

16 THE COURT: The second request is do you wish
17 them in writing or orally on the day of sentence?

18 MR. VERDIRAMO: In writing. I would like ten
19 days.

20 THE COURT: The rules prescribe ten days.
21 It is a question of more.

22 MR. VERDIRAMO: I am trying to think of my
23 trial schedule. Within two weeks, would that be
24 satisfactory? It will be a motion for a new trial.

25 THE COURT: Yes, I think that would be ample

1 time. If you serve your papers within two weeks,
2 today is the 29th, that means motions served by the
3 12th and returnable on the 20th. That would be eight
4 days' notice.

5 MR. VERDIRAMO: That is more than enough time.

6 THE COURT: At 11:30 A.M.

7 In the meanwhile, go to the Probation
8 Department with your client and discuss that.

9 Mr. Corbett?

10 MR. CORBETT: I reserve to the day of
11 sentence at which time I will make them orally.

12 THE COURT: You remind me then.

13 MR. O'BRIEN: I reserve until the time of
14 sentence.

15 MR. KAPLAN: I will reserve and do the same as
16 Mr. Corbett.

✓ 17 MR. SPERLING: I reserve and make motions
18 orally before sentence.

19 THE COURT: Remind me, gentlemen, of the fact
20 you have reserved at the time of sentence. My
21 memory is not limitless and I will try to remember
22 myself.

23 Anything further?

24 (Adjournment.)

25 * * *

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Joseph Barbella

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